Supreme Court, U.S.
FILED

MAY 28 2010

OFFICE OF THE CLERK

No. 10-870

In the Supreme Court of the United States

Marvinell & Gregory Harlan
PETITIONERS

VS.

Texas Department of Regulatory & Protective Services (CPS), et al.
& Department of Health and Human Services-(DHHS), et al.
RESPONDENTS

Original Proceeding-no. 2002-49137 & no. 2003-33624 from the 215th Judicial District Court of Harris County, Texas; IN THE INTEREST OF M.R.W. no. 14-04-00386-CV 14th Court of Appeals; no. 08-1943 from the United States District Court of the Southern District of Texas; no. 09-20207 from the 5th Circuit Court of Appeals

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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ORAL HEARING REQUESTED

Causing conflict with *Ashcroft, Twombly, Ryland, Memphis,* the 5th Circuit panel **agreed** with the lower court and respondent CPS and wrote "Moreover, plaintiff's failure to show that the defendants violated any of plaintiff's constitutional rights preclude all of their claims" Apx A(3 L6) The Honorable Judge Gilmore of the district court wrote "Plaintiffs fail to allege any facts showing a violation of a clearly established right to a court order or hearing" Apx B(2 L18-L20) *BUT,* the right to marry, to establish a home and bring up children is also a fundamental liberty interest protected by the Fourteenth Amendment. *Meyer v. State of Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923) Was Harlans' son abducted by a government official in America? After all, there has been no hearings or due process.

QUESTIONS PRESENTED FOR REVIEW

QUESTION 1 Was 5th Circuit court panel's judgment of affirming this FRCP 12(b)(6) dismissal actually made even though this panel failed to accept as true Harlans' factual allegations and rejected: 'adoptive parents entitled to due process claim' -*ISSUE 1*-pgs. 9, 10 and instead opted for defendants' falsehood that the Harlans were Milton's foster

parents not entitled to due process; '1st Amendment/retaliation claim'-*ISSUE 2* considering Milton was removed from the Harlans' home on the very same day after Petrey received Harlan's protest injunction to court about the adoption delay and on the very same day black case workers and Harlans had finally agreed on a new adoption plan for the problems; '14th Amendment and FAM §262 relief claim'- *ISSUE 3* and opted for the lower court's and defendants' allegation that the adoption had not been consummated and therefore Harlans not entitled to constitutional protection?

APPELLANTS' BRIEF, pg. 27 filed 11/14/08; JURISDICTION BRIEF filed 11/14/08 [R p. 436 L35 Each challenged activity . . .separately]; MOTION FOR NEW TRIAL filed 3/13/09-[R pgs. 522 525 L7-L17 Grouping all state and then grouping all federal claims; 525 L24-L27 court could not determine abduction issue, immunity issue, discriminatory issue by a dismissal 534 L14 ' trial court did not even cite Harlans' issues']

QUESTION 2 Whether district court or HHS could resolve First Amendment, retaliatory, and discriminatory claim so expeditiously with dismissals considering Milton was removed the very next day after Janice Petrey and Caseworker Marecia Strong received a copy of the protest injunction about the adoption delay and the ad litem's disposition but on the exact same day caseworkers and the Harlans had

agreed on a new adoption plan to cure the problems in Petrey's removal letter?

JURISDICTION BRIEF filed 11/14/08 [R pgs. 435 L2-L6, 436 L2-L7, 437 L15-L22 Petrey boiling, 438 L9, 445 L8] SUPPLEMENTAL PLEADING filed 8/12/08 [R p. 283 L15 protest 310 L39-L47 adoption halted ad-litem] MOTION FOR NEW TRIAL filed 3/13/09-[R pg. 528 L1-L5]:BRIEF-Issue 2

QUESTION 3 Did the lower federal courts failed to determine whether defendants abused his or her privilege to assert qualified, sovereign, or Eleventh Amendment immunity defenses relative to Harlans' claims which involved 1st, 14th, and §1983 violations?

JURISDICTION BRIEF- filed 11/14/08 [R pgs. 435, 438-440 immunity] COMPLAINT filed 6/19/08 [R pgs 29 L7-L34 L15 Petrey knew hearings were required] State authority/sovereign immunity [R pgs 28 L1 L3, 31 L4]Violation due process abrogate Eleventh Amend., [R pgs 28 L18] It was an abuse of discretion for them not to make determination.

PARTIES & CASE NO. OF LAWSUIT FROM ALL THE COURTS

Appellants/Plaintiffs: **Marvinell/Gregory Harlan**- adoptive parents

5722 Tiffany
Houston, Texas 77085
(713)721-1317

Appellees /Defendants:

Texas Department of Protective and Regulatory Services-(CPS) or (DFPS)

Janice Petrey, FAD Prog. Director-INDIVIDUAL CAPACITY
Randy Joiner-Houston CPS Director-INDIVIDUAL CAPACITY
Thomas Chapmond Exec. Director-INDIVIDUAL CAPACITY
Betty Hable, Ombudsman Director-INDIVIDUAL CAPAC
2525 Murworth Suite 300
Houston, Texas 77054 (713) 394-4446

Department of Health and Human Services (HHS) Office for Civil Rights

Ralph Rouse-Dallas Regional Manager INDIVIDUAL CAPACITY
1301 Young Street, Suite 1169 Dallas, Texas 75202
Kenneth Small,-INDIVIDUAL CAPACITY Washington
Tamara Miller, Deputy Director-INDIVIDUAL CAPACITY
Washington

ASSOCIATE TRIAL JUDGE	PRESIDING TRIAL JUDGE
Honorable Judge	Honorable Judge
Daniel Lemukil	Lesa Millard

No. 14-04-00386-CV **14th Court of Appeals**
Honorable Justices Edelman, Fowler, and Seymore

No. 06-0076- **SUPREME COURT OF TEXAS**

No. H-07-1961 **U.S. District Ct.**/Honorable Judge Kenneth Hoyt
No. H-08-1943 **U.S. District Ct.**/Honorable Judge Vanessa Gilmore

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STATEMENT OF THE CASE 4

A. Harlans are/were adoptive parents and not foster parents. pg. 4 L3-L4

B. Dr. DeAlmeida was hired by CPS to assess the adoption of Milton by the Harlans; he recommended in September 2002 the adoption occur. pg. 4 L8-L12

C. Ad Litem Tammy Adams was over eight months pregnant when she conducted the thirty minute assessment over the phone on November 26, 2002 and recommended the adoption be delayed. pg. 4 L17-L19

D. On January 24, 2003 Harlan filed the temporary injunction protesting the six month delay in consummating the adoption of Milton because of the inferior assessment by the ad litem. pg. 4 L20-L23

E. On January 27, 2003 CPS Petrey and Strong received certified copy of the protest-temporary

injunction. On January 28, 2003 without a judge's order Petrey abducted Milton on the same day caseworkers and the Harlans had agreed on a new adoption plan to fix the problems. pg. 4 L23-L29

F. In Texas state courts, CPS defendants manufactured issues that interfered with litigating Milton's abduction: Harlan's manufactured mental issue and two year standing issue caused by **three** original petitions for adoption There was no reference to Milton or his removal, due process/constitutional issues in state courts' judgments or on the docket sheets. pg. 5 L23-L33

G. This CA panel agreed with the lower court and respondents that the Harlans had been denied the opportunity to litigate the removal/abduction of their son because the adoption had not been consummated. pg. 7 L9-L13

REASONS FOR GRANTING THE PETITION pg. 7

I. The 5th Circuit CA failed to review this dismissal for failure to state a claim pursuant to FRCP 12(b)(6) upon which relief can be granted *de novo* or independent of the lower court's initial

assessment by assuming that all of Harlans' factual allegations were true. The panel simply rejected Harlans' allegations and accepted the lower court and defendants' allegations as true. This was contrary to case law on FRCP 8(a) & 12(b)(6) and resulting in Harlans not being able to litigate the removal/abduction of their son. This caused constitutional and substantive violations. . . . . *Question 1/Issue 1* pgs. 7-13

II. Contrary to *Ashcroft, Twombly, Ryland,* and *Memphis,* the panel rejected Harlans' factual allegation that they were adoptive parents and accepted the defendants' wrong allegation that the Harlans were foster parents. . . . . *Question 1/Issue 1* pgs. 9-10

III. Neither of the lower courts in their judgments or the Respondents ever even mentioned the 1st Amendment/retaliation claim which warranted relief-p.17 **Petrey removed/abducted Milton on the next day after learning Harlan had protested to the court about the adoption delay and the ad litem's inferior assessment.** . . . *Question 2/Issue 2* pgs. 15-18
Question 1/Issue 1 p. 12 L17

IV. But **again** the 5th Circuit evidently decided Harlans' claim was false and supported the lower court's wrong assessment without even considering Harlans' claims, facts, statue, or case law and wrote "The district court also correctly dismissed. . . . . the individual state defendants Petrey, Joiner. Chapmond and Hable, on the basis of qualified immunity" Apx A(2 L27-L28); Apx. B(2 L20) . . . . . *Question 3/Issue 3* pgs. 28-32

V. Petrey/CPS violated chapter 262 (Texas FAMILY Code), the 1st. and 14th Amendments by (1) denying Harlans opportunity to challenge the removal and (2) failing to attempt even one time to return Milton back to his home. State and federal law states clearly that CPS should had worked at returning Milton back to his home. Defendant HHS failed to inquire whether there had been any attempt to return Milton. This panel **again** agreeing with lower court and defendants wrote without any authority "The plaintiffs cite no authority, clearly established or otherwise, that indicates that they had any protected constitutional rights or interest related to that child." Apx. A(3 L1-L4); Apx. B(2 L18) Bennett-"They were not entitled to any of the protections or processes set forth in Family Code Section 262." Dbrf(12 L10-L18) . . . . . *Question 3/Issue 3* pgs. 27-32

CONCLUSION . . . . . .Page 35

RULE 29.5(c) CERTI. OF SERVICE & COMPLIANCE . . Attached

Abbreviations: **APX**-Appendix **R**- record from federal district court **Tr**anscript pgs. from district court hearing; 5th Circuit-Appellants' Brief **(BRF)**, **Dbrf**-brief of DFPS; **Hbrf**-brief of HHS

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§262.105 pgs. 3, 31, K(3)

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OPINIONS AND ORDERS ENTERED BY COURTS & ADMINISTRATIVE STRATEGIES

Appendix A-M (**page no.** relative to alphabet letter)
(random page no. is from record)
Appendix A(**1**)-5th Circuit CA panel opinion dated December 28, 2009- (Affirmation not published)

Appendix B(**1**)-district court no.-08-1943 dismissed March 3, 2009 and unreported [R pgs. 518-520]
B(**4**)-MNT denied 3/31/08 [R p. 558]
B(**5**)-MOTION TO ADD OR AMEND FINDINGS OF FACT AND CONCLUSIONS/FRCP 60(b) MOTION FOR RELIEF FROM JUDGMENT filed 4/20/2009 [R p. 562]
B(**6**)-district court no.-07-1961 dismissed December 14, 2007 and unreported [R p. 171]

Appendix C(**1**)-CA denied rehearing en banc on March 5, 2010

Appendix D(**1**)-petition for writ of certiorari postmarked May 28, 2010 and filed on June 3, 2010- corrected petition due 60 days from June 10, 2010
Appendix D(**2**)-petition for writ of certiorari postmarked August 7, 2010 and filed on August 11, 2010- corrected one due 60 days from Aug. 11, 2010
Appendix D(**3**)-petition for writ of certiorari postmarked October 7, 2010 and filed on October 14, 2010- corrected petition due 60 days from Oct. 20, 2010

Appendix E -Texas state court judgments
E(**1**)-State district case dismissed Jan. 6, 2004 [R p. 70]
E(**2-4**)-Docket sheets for state district court

E(4)-Docket sheet real reason for dismissal [R 92 JAN 6]
E(5)-14th Court Appeals' 8/23/2005 dismissal [R pg. 66 L24]
E(10)-Supreme Court of Texas PETITION FOR REVIEW denied-September 22, 2006; MRH denied Dec. 22, 2006

JURISDICTION

The jurisdiction is of this court is invoked under 28 U.S.C. §1254(1). Fifth Circuit CA panel affirmed district court opinion on December 28, 2009. Apx A(p. 3 L9) CA denied rehearing en banc on March 5, 2010. Apx C(2 L3) Harlan filed PETITION FOR WRIT OF CERTIORARI on June 3, 2010 and postmarked May 28, 2010. Apx D(1) But, it was returned because of many errors. Harlans have alleged 1st, 5th, and 14th Amendment violations, Section 1983, and discriminatory violations. Harlan filed another PETITION FOR WRIT OF CERTIORARI on August 11, 2010 and postmarked August 7, 2010. Apx D(2) But it was returned mainly because of the font size of the appendix judgment documents. Harlan filed another PETITION FOR WRIT OF CERTIORARI on October 14, 2010 and postmarked October 7, 2010. Apx D(3) But it was returned mainly because of the margins.

CONSTITUTIONAL/STATUTORY PROVISIONS INVOLVED

The following relevant provision of the constitutional law is reproduced at Appendix K:

1st Amend., 5th Amend., 11th Amend., 14th Amend.

pg. K(1)

42 USCA 1983 pg. K(2)

The Adoption Assistance and Child Welfare Act of 1980 42 U.S.C.A. §625(a)(1)(C); §671(15) pg. K(2)

42 U.S.C.2000d pg. K(2)

The following relevant provision of Texas State Family Code is reproduced at Appendix K:

FAM §262.105 (a) FILING PETITION AFTER POSSESSION OF CHILD IN EMERGENCY pg. K(3)

FAM §262.106 (a) (b) (c) INITIAL HEARING AFTER TAKING POSSESSION OF CHILD IN EMERGENCY WITHOUT ORDER pg. K(3)

FAM§262.201(a) FAM§262.201(b) FAM§262.201 (b)(1)(2)(3) pg. K(4)

FAM§262.109(a) FAM §262.109(b) FAM§262.109 (c)(1)(2)(3) pgs. K(4) /K(5)

FAM §262.104 TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER pg. K(5)

FAM§262.2015(a) FAM§262.2015(b) pg. K(5)

FAM§263.101 pg. K(5)

§101.024 pg. K(6)

§101.025 pg. K(6)

Statement of Case

1. On September 25, 2002 Attorney Angelus Jones (former) filed the ORIGINAL PETITION FOR ADOPTION of Milton. [R pg. 99] 2. Even though Milton's nightmares were diminishing and almost gone, Demetrius Maxwell, a caseworker, suggested that Milton see a psychiatrist; the Harlans selected Dr. Steven DeAlmeida who acknowledged reason for evaluation- "the request of Children's Protective Services". Apx L(1 L14) 3. On September 12, 2002, DeAlmeida found that Harlan and Milton had bonded and recommended that the adoption take place; he also recommended that Milton receives counseling for depression. Apx L(2 L8-10 L18) 4. After meeting with Petrey and other CPS representatives about the November 26, 2002 mini-phone assessment by Ad-Litem Attorney Tammy Adams who was over eight months pregnant, Harlan filed the January 24, 2003 temporary injunction about CPS decision to delay the adoption because of what the ad litem said about Mother Harlan. Apx G(4 L31-37); Apx J(p. 1 L4 L29-32) 5. The green certified card proved Harlan mailed Petrey and Strong a copy of the temporary injunction/protest relative to delaying the adoption for another **six** months and about the inferior ad litem's assessment. Apx J(pgs. 2 3 L6 1-27-03 green); Apx G(p. 3 L5 7/1/2003) 6. On January 28, 2003 the day after receiving Harlans' injunction-Apx J(pgs. 2

L11 forwarded to both . . . Petrey Adams 3 L6 1-27-03 green), Petrey retaliated by violating Harlan's 1st Amendment right to protest and maliciously 'removed' Milton without court order, due process, or authorized reasons on the same day black caseworkers and the Harlans had agreed on a new adoption plan to **fix** 'problems'. Apx G(p. 6 L33 January 28); Apx H(p. 1 L29 January 28) 7. On March 6, 2003 which was over 35 days after Milton's abduction on January 28, 2003, Ms. Petrey finally provided Harlans with the ludicrous reasons: 1) Harlan had improperly signed the adoption plan and 2) had not arranged counseling for Milton. Apx F(pgs. 1 L28-L34 3 L6 MAR 06); Apx H(1 L29 28 2 L27 28) 8. But the record showed the Harlans had scheduled an appointment with psychologist-Dr. Weltzen on January 30, 2003. Apx F(p. 4 L7) 9. Harlans' former attorney also addressed the same reasons in his letter to Petrey. [R pgs. 305 L7 reasons 351 L45-L51] 10. After Harlans had filed the lawsuit trying to get Milton back home and after Milton had been gone from the Harlans' home for over eight months, CPS Attorney Masquelette filed MOTION FOR PSYCHIATRIC EVLAUATION OF MARVINELL HARLAN. [R pgs. 71, 76] 11. But Attorney O'Connor (former) responded there was not a 'good cause' and that Harlan's mental condition was not 'in controversy'. [R p. 73] 12. But the Honorable Judge Lemukil refused to give Harlans any hearing regarding the abduction of their son until the CPS Dr. Silverman examined Harlan. Apx E(4 L5 JAN 6) 13. Anxious for her son return, Harlan had agreed to evaluation by a CPS Dr. Silverman. [R pgs. 75 76] 14. But after prayer and considering Dr. DeAlmeida's

credible assessment-Apx L(pgs. 1, 2) and Petrey's cruelty, Harlan backed out of the agreement. Apx E(p. 4 L5 JAN 6) **15**. Docket entry dated January 6, 2004 shows why Harlans' case was dismissed by the Honorable Associate Judge Lemukil: 'Custody eval. not complied with by Pets.-Case DWOPED' Apx E(4 L5 JAN 6) **16**. Attorney Rice (former) made costly 'standing' errors by filing two more additional 'original' petitions on May 13, 2003 [R pg. 120 L1 2002-49137] and on June 18, 2003 [R p. 113 L1 2003-33624] **17**. The 14th Court of Appeals using the wrong petition-June 18, 2003 for 'standing' purpose dismissed Harlans' lawsuit on August 23, 2005. Apx E(5 L24 9 L9) **18**. Supreme Court of Texas denied the PETITION FOR REVIEW on September 22, 2006. Apx E(10 L6) **19**. In Texas state courts, CPS defendants manufactured issues that interfered with litigating Milton's abduction: Harlan's manufactured mental issue, and **three** original petitions for adoption filed which caused the two year standing issue. Apx E **20**. There was no reference to Milton or his removal, due process/constitutional issues in state courts' judgments or on the docket sheets. Apx E **21**. Harlan filed a complaint with HHS OCR on February 1, 2007; HHS ruled on complaint on December 12, 2007 and "found no evidence that CPS took actions based on a racial bias in this case." Apx I(p. 1 L40) **22**. Harlan filed first federal complaint against CPS on June 12, 2007. [R pgs. 169, 170] **23**. This lawsuit was dismissed by the Honorable Judge Kenneth Hoyt without an hearing or a credible reason on December 14, 2007. Apx B(6 L29) **24**. Harlan filed another lawsuit on June 19, 2008 adding DHHS

as defendants. [R pg. 8] 25. Judge Gilmore dismissed Harlans' lawsuit on March 3, 2009 for sacrificed defenses, FRCP 12(b)(2), & FRCP 12(b)(6). Apx B(pgs. 2 L7-L30 3 L4-L8) 26. Harlan filed MNT on 3/13/2009 [R 522] and it was denied on 3/31/09. Apx B(4) 27. 5th Circuit CA panel affirmed district court opinion on December 28, 2009 and agreed "with the district court's disposition of this case". Apx A(pgs. 1 2 L8) 28. The three panel judges, district judge, and defendants argued that since the adoption had not been consummated, then the plaintiffs were not due "protected constitutional rights. . .plaintiff's failure to show . .defendants violated. . . rights. . . precludes all of their claims" Apx A(p. 3 L3-L7); B(2 L17); H(2 L4 L30) 29. Defendant CPS Attorney Bennett claimed "not entitled to any of the protections or processes set for in Family Code Section 262" Dbrf(pg. 12 L10-L18) 30. CA denied rehearing en banc on March 5, 2010. Apx C(p. 2) 31. Psalm 82

REASONS FOR GRANTING THE PETITION

QUESTION 1 Was 5th Circuit court panel's judgment of affirming this FRCP 12(b)(6) dismissal actually made even though this panel failed to accept as true Harlans' factual allegations and rejected: 'adoptive parents entitled to due process claim'-*ISSUE* (1)-p. 10 and instead opted for defendants' falsehood that the Harlans were Milton's foster parents not entitled to due process; '1st Amendment/retaliation claim'-*ISSUE* (2) considering Milton was removed from the Harlans' home on the very same day after

Petrey received Harlan's protest injunction to court about the adoption delay and on the very same day black case workers and Harlans had finally agreed on a new adoption plan for the problems; '14th Amendment and FAM §262 relief claim'- *ISSUE* (3) and opted for lower court's and defendants' allegation that the adoption had not been consummated and therefore Harlans not entitled to constitutional protection?

ISSUE 1

The 5th Circuit panel's affirmation and district court's dismissal was **egregious** error which essentially denied Harlans' substantive and constitutional access to the courts. Having no authority, the lower federal courts and respondents were too quick to claim Harlans did not have any right to challenge the removal of their beloved son. CPS opinion without any authority destroyed a Christian home under the Lord's permissive will and judgment.

On May 3, 2009, the federal district court dismissed Harlans' lawsuit for (1) failure to state a claim that warranted relief FRCP 12(b)(6) (2) defendants' defenses. Apx B(p. 2 L16 L20-L22 L26) The 5th Circuit wrote "We agree with the district court's disposition of this case. . . for failure to state a claim. . . . .Plaintiffs failed to plead sufficient facts to demonstrate that the defendants' conduct violated any constitutional right." Apx A(p. 2 L8 L29-L31)

When reviewing the dismissal of Harlans' lawsuit, this appeal panel was bound by FRCP 8(a) & 12(b)(6) which required Harlans' allegations be interpreted favorably, all petitioner's factual

allegations in complaint be accepted as true, and that not even one set of facts existed that would had entitled the Harlans to any relief. *Twombly*, pgs 544, 555 and *Memphis*, pg. 898

The lower federal courts rulings were made arbitrarily; facts, legal statue, guide, or case law were not employed. The 5th Circuit opinion clearly shows this panel opted to accept the defendants' and lower court's allegations as true and rejected Plaintiff's claims as true. This FRCP 12(b)(6) dismissal was very contrary to the following case law and statue. The Harlans ask the Honorable Supreme Court's supervision because the lower courts departure from the accepted and usual course of judicial proceedings was very wrong.

The 5th Circuit CA failed to review this dismissal for failure to state a claim pursuant to FRCP 12(b)(6) upon which relief can be granted *de novo* or independent of the lower court's initial assessment by assuming that all of Harlans' factual allegations were true. *Ashe v. Corley*, 992 F.2d 540, 544 (5th Cir. 1993) The Honorable Supreme Court addressed FRCP 8(a) and how the reviewing court should had assessed Harlans' allegations. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether their plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009) and "on the assumption that all the allegations in complaint are true" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) Explaining how to satisfy the federal rule requirement of stating a claim upon which relief can be granted, *Memphis*, 361 F.3d 898

(6th Cir. 2004) demonstrated "Under the liberal notice pleading rules, a complaint need only put a party on notice of the claim being asserted against it." "Where an allegation is "wholly conclusory and totally unsupported by any facts" . . . . . .it will fail to state a claim" *Memphis*, p. 906

Contrary to *Ashcroft, Twombly*, and *Memphis*, the panel rejected Harlans' factual allegation that they were adoptive parents and accepted the defendants' wrong allegation that the Harlans were foster parents. This was very far from the truth; the appellant record shows clearly Milton was not a foster child and that the Harlans were Milton's adoptive parents/parents and not his foster parents. Apx G(pgs. 1 L1 Adoption L17 Adoption 3 L10 **parent/child** 6 L43 Parent); [R pgs. 84 L1, 88 L43 Parent 99 130 L32 143 145 L8 Adoptive Parents 146 L55 Adoptive Parents] This means the Harlans as parents/adoptive parents were due the protection of the Fourteenth Amendment. According to §101.024-Apx K(6), ""Parent" means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father." This means the Harlans were due at least the protection of the Fourteenth Amendment and FAM chapter 262. State law gives adoptive parents the same protection given to biological parents considering the definition of 'parent' in §101.024-Apx K(6). The Harlans and Milton had a parent-child relationship. Apx G(3 L10 **parent/child**); 101.025 K(6) Dr. DeAlmeida wrote "There was indication of a bond

between Mrs. Harlan and Milton. The assessment did not indicate problems in her relationship with and care for Milton that would be detrimental if she and her husband adopted." Apx L(2 L8) The 5th Circuit panel consisting of the Honorable Judge Davis, Smith, and Dennis rejected Harlans' adoptive parent allegation and concluded "("DFPS") removed a minor child from their **foster** care." Apx A(2 L8) CPS Attorney Bennett also wrote "Plaintiffs do not state a viable cause of action against the Defendants for DFPS' removal of Plaintiff's **foster** child from the Plaintiffs' **foster** care." Apx H(p. 1 L8-L10)

But <u>again</u> contrary to *Twombly*, and *Memphis*. the 5th Circuit supported the lower court's wrong assessment without even considering Harlans' claims, facts, statue, or case law and wrote "The district court also correctly dismissed. . . . . the individual state defendants Petrey, Joiner. Chapmond and Hable, on the basis of qualified immunity" Apx A(2 L26); Apx B(2 L20) But 'Judge' Petrey who illegally removed Milton, also failed to file lawsuit, and to arrange initial hearing <u>abrogated</u> and sacrificed her qualified immunity defenses. See *ISSUE 3*.

On March 3, 2009, the Honorable Judge Gilmore of the district court wrote "The Court finds that Defendant DFPS is entitled to sovereign immunity under the Eleventh Amendment . . . ." Apx B(2 L7) This 5th circuit panel considered Harlans' <u>DFPS</u> claims as false and accepted the district court's judgment as true. The law shows the panel should have accepted Harlans' claims as true. Surprisingly, the panel wrote "The claims against the Texas DFPS

are barred by the Eleventh Amendment which deprived federal courts of jurisdiction to hear a suit by a private citizen against a state in federal court. *Alabama v. Pugh*, 438 U.S. 781, 781-82 (1978)" Apx A(p. 2 L23); [R 243 L9 Bennett] **But** the Eleventh Amendment could be circumvented by naming a state officer in their "individual capacity" as defendant instead of the state government itself. *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358 1991 EN BANC(21 L30) The Supreme Court has also held that federal statutes such as §1983, based upon the congressional power to enforce the Fourteenth Amendment are not subject to Eleventh Amendment jurisdictional rules. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S.Ct. 2666 (1976) Being bias, the lower courts committed an abuse of discretion by never even considering 1st Amendment/retaliation claim against Petrey, the 'Judge' Petrey's violation, due process and substantive violations, §1983, and many more.

Clearly, the 5th Circuit panel blanketed the defendants with undeserved immunity without even considering Harlans' very credible claims that abrogated their defenses. How unfair! For example, the panel overlooked the following claim "Violating the Fourteenth Amendment and FAM §262.104, 'Judge' Petrey abducted Milton without a hearing or a judge's order on the same day case workers had gone to Harlans' home and agreed on a new adoption plan to fix the problems." Brief(27 L10 46 L26); Apx G(6 L33 28); Apx H(1 L17 28) Of course, if an official is acting outside the scope of his authority, he is entitled to no immunity at all. *Butz v. Economou*, 438 U.S. 478, 98 S. Ct. 2894 (1978)

This 5th Circuit panel dismissal was so bias and prejudicial considering the panel evidently used the 'foster' error, due process/consummation error, and the clearly sacrificed/abrogated qualified immunity and Eleventh Amendment defenses to dismiss Harlans' lawsuit. Supreme Court review is necessary because the lower courts' dismissals/affirmation violated the 1st, 14th Amendments, §1983, and the FRCP 8(a) & 12(b)(6) laws. The Harlans surely have been denied their day in court because the dismissal and affirmation squashed Harlans' 1st/14th Amendment right to challenge the removal of their beloved son.

The 5th Circuit standard of review for a FRCP 12(b)(6) action was also set out by the Supreme Court in *Conley v. Gibson*, 355 U.S. 41, 45-46; 78 S.Ct. 99, 102 (1957) "In appraising the sufficiency of the complaint we follow the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt, that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief." An even less stringent pleading requirement is sometimes said to apply to pro se complaints *Haines v. Kerner* 92 S.Ct. 595, 596 (1972) or civil rights complaints *Watts v. Graves* 720 F.2d 1415, 1419 (5th Cir. 1983)

Since Harlans' allegations were not conclusory but were supported by facts, case law, and statues, it did not appear beyond doubt that Harlans could prove no set of facts in support of their claims which would entitle them to relief. *Haines v. Kerner* 92 S.Ct. 595 (1972). The record, in particular, statement of the case/facts in the Complaint, Brief, and now this

Petition, showed issues/claims were 'proved up' The lower courts failed to explain why the claims Harlans raised would not demand relief. "Where an allegation is "wholly conclusory and totally unsupported by any facts" . . . . . .it will fail to state a claim" *Memphis,* p. 906

"Motion to dismiss for legal insufficiency is viewed with disfavor in the federal courts. . .rule 12(b), 28 U.S.C.A. . . . . Issue is not whether the plaintiff's success on the merits is likely but whether claimant is entitled to proceed beyond threshold in attempting to establish their claims; moreover, in passing on motion to dismiss, allegations of complaint should be construed favorably to the pleader. . . .rule 12(b), 28 U.S.C.A." *De La Cruz v. Tormey*, 582 F.2d 45 (9th Cir., 1978) Even this 5th Circuit Court responded to another dismissal for failure to state a claim and wrote "We cannot say with certainty that there is no possibility that any set of facts which might be proved in support of the allegations would entitle the Rylands to some relief. Therefore, it was error by the district court to dismiss the complaint." *Ryland v. Shapiro* 708 F.2d 974 (5th Cir. 1983) "A similar failure to consider a valid theory of recovery under the Constitution resulting a dismissal for failure to state a claim upon which relief can be granted amounts, in our view, to far more egregious error. Accordingly, we remand the case" *Ryland* at pg. 973

In addition and more important, the lower courts could not litigate Harlans' issues by a dismissal! "Where racial classifications are involved, the Equal Protection and Due Process Clauses of the Fourteenth Amendment 'command a more stringent standard' on

reviewing discretionary acts of state or local officers. *Jackson v. Godwin*, 400 F.2d 528, 537 (5th Cir., 1968) This has again been made clear by the Supreme Court in *McLaughlin v. Florida*, 1964, 379 U.S. 184, 85 S.Ct. 283 Therefore, dismissal of Harlans' case would not be considered a more stringent standard of reviewing discretionary acts of state, local officers, or federal officers.

This panel **again** agreeing with lower court and defendants wrote "The plaintiff's adoption of the minor child was never consummated. The plaintiffs cite no authority, clearly established or otherwise, that indicates that they had any protected constitutional rights or interest related to that child." Apx. A(p. 2 L21 L22); Apx. B(p. 2 L4) Clearly, Harlans were entitled to 14th Amendment protection and a full adversary hearing to challenge what Petrey had done according to:

"FAM§262.201(a)- Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the child was taken into possession by the government entity." Brief (pgs. 30, **31, 32**, 38)

But, none of the involved federal judges or the DFPS attorney gave any authority for their 'view' or opinion about the Harlans not entitled to protection or due process because the adoption had not been consummated; this was a **grave** error. Nowhere in Texas state or American law is the requirement an adoption must be consummated before adoptive

parents are entitled to legal protection.

If the lower federal courts and CPS attorneys were correct about no legal protection for the Harlans because the adoption had not been consummated, then the Harlans would never be able to grieve the abduction/removal of their beloved son. The record shows clearly it was CPS, the defendants, who decided against consummating the adoption at the end of the usual six months. Apx G(1 L17) Surely, Harlans' status as adoptive parents, a tenured teacher with property & liberty interest, and all of the authority including 1st, 5th, & 14th Amendments, and FAM 226 proved Harlans were entitled to relief. According to *Chambers v. Baltimore & Ohio Railroad Co.* 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907), "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship. . . granted and protected by the federal constitution." In *Jackson v. Procunier,* Court itself will undertake to assure litigant that no meritorious case be lost for a pro se litigant. *Haines v. Kerner* 92 S.Ct. at 596 (1972). A dismissal is an evil tool if the merits of a case are not considered. Harlans' property and liberty guarantees secured them against this arbitrary CPS government action.

QUESTION 2 Whether district court or HHS could resolve First Amendment, retaliatory, and discriminatory claim so expeditiously with dismissals considering Milton was removed the very next day

after Janice Petrey and Caseworker Marecia Strong received a copy of the protest injunction about the adoption delay and the ad litem's disposition but on the exact same day caseworkers and the Harlans had agreed on a new adoption plan to cure the problems in Petrey's removal letter?

ISSUE 2- Harlan's protest to the courts is deserving of constitutional relief given by First Amendment jurisprudence. Because Attorney Tammy Adams, Milton's former ad litem, was over eight months pregnant and was not able to come to the Harlans' home, she conducted her mini/quick assessment of the Harlans on the **phone** in only thirty minutes. Apx G(4 L24-L32); [R pgs. 498 L6 baby 501 L7] CPS used this inferior and unlawful assessment to delay the adoption by another **six** months! Harlan then filed protest with court. Consider the order of events leading to Milton's removal/abduction:

A. After meeting with CPS and Director Janice Petrey on December 20, 2002 about problems Apx G(p. 2 L6-L10), Harlan felt she needed court mediation. On **January 24**, 2003 Harlan filed a temporary injunction protesting the six-month delay in consummating the adoption of Milton and the ad litem's inferior assessment. Apx J(p.1 L14 L24 L31) Apx G(pgs. 3 L5 4 L24-L33)

B. On **January 27**, 2003 CPS Petrey (white) and Caseworker Strong (black) received the certified copy of the temporary injunction. Apx J(2 L16 3 L5 1-27-03 green card)

C. On **January 28**, 2003 without authorized reasons or a judge's order, Petrey maliciously abducted

Milton on the same day Strong and the Harlans had agreed on a new adoption plan. Apx G(6 L33 28) CPS Attorney Bennett also substantiated the removal fact and wrote in her dismissal motion "On March 11, 2002, DFPS placed a child, Milton Ray Williams. . . . with Plaintiffs. Ten and one-half months later, on January 28, 2003, for various authorized reasons, DFPS removed MRW" Apx H(1 L29 28 2 L27 28) These facts prove Petrey must have had retaliatory reason(s) for removing Milton because of injunction. "Court found that lawsuit was a substantial factor in board's decision to repeal the program, court correctly considered chronology of events and effectively explained its reasoning. . . .42 U.S.C.A. 1988" *Associated Bldrs v. Orleans Parish School* 919 F.2d 374 (5th Cir. 1990)

Were the 'reasons' evidence irrelevant and not necessary for the lower federal courts making their judgments? These federal lower courts excluded the 'reasons' factor. But they had to examine the reasons Milton was removed to determine if compelling state interest(s) existed to warrant interfering with Harlans' parent-child relationship with Milton. "Defendants actions may be justified only if they show a compelling state interest. *Loving v. Virginia*, 388 U.S.. 1, 87 S.Ct. 1817 (1967)" *Hawkins v. Town of Shaw, Mississippi*, 437 F.2d 1288 (5th Cir.,1971) CPS had no compelling state interest in removing Milton from the Harlans' home and in not returning Milton to the Harlans' home. But there were compelling state interests for Milton to be returned to the Harlans' home and for Milton to be adopted because of the grim statistics of Texas

removing too many black children from their homes. Therefore, defendants' actions were not justified but yet the lower courts supported the unlawful behavior!

Never did the 5th Circuit-Apx(A) or district court Apx(B) even cited the 1st Amendment/retaliation claim **which was deserving of relief**.-FRCP 8(a) 12(b)(6). Brief-*Issue 2*-pgs. 22-29 CPS Attorney Bennett also disregarded the reasons Milton was removed; she just claimed Milton was removed for '**various authorized reasons**'. Apx H(pgs. 1 L30 various 2 L28 various) Does the 'various authorized reasons' involve the Harlans using drugs, Harlans sexually misusing Milton, or were the Harlans not feeding Milton? Therefore, the appellate and the district courts should had weighed the very relevant 'reasons' evidence, the chronology of the circumstances leading to the removal, and the retaliation/1st Amendment claim.

In Milton's removal letter, Petrey claimed Harlan resisted taking Milton to a psychologist. Apx F(pgs. 1 L25 2 L15) But the record showed the Harlans had scheduled an appointment with a psychologist on January 30, 2003 which was two days after Milton was removed. Apx F(4 L7) Petrey also wrote "When you did not comply with signing the plan of service timely and appropriately, Milton was removed." Apx F(1 L30) Daddy Harlan signed new adoption plan on January 26, 2003 but Harlan was apprehensive and simply did not sign until January 28, 2003. Apx G(6 L35) Therefore, neither the signature issue nor the counseling issue could had been the actual reason(s) Milton was removed. "It follows that evidence is irrelevant only when it has *no*

tendency to prove the fact" *Spain v. Gallegos* 26 F.3d 439 (3rd Cir. 1994). These reasons prove Petrey's retaliation. Harlan's former attorney also addressed the same reasons in his letter to Petrey. [R pgs. 305 L7 reasons 351 L45 L51] If 'counseling' & 'Harlan's signature' were the real reasons Petrey removed Milton, why wasn't Petrey ever willing to work with these light-weight problems as required by federal and state law-42 U.S.C.A. §625(a)(1)(C); §671(15); FAM §262.201(b); §262.2015(a)?

The new adoption plan which was dated 1/16/2003 and finally signed by Harlan on the same day Milton was removed had the following fix for the problems addressed in Petrey's removal letter. "Milton is to be taken to get therapy by Mr. Harlan by January 31, 2003. . . .This agency will need positive feedback from Milton's therapist" Apx G(1 L25 L36) This was very relevant evidence that Petrey actually retaliated and removed Milton because the reasons given for removal were actually **being resolved** with the new adoption plan! Petrey never gave the new adoption plan a chance to work. SHE VIOLATED THE 1ST AMENDMENT AND TORE UP A FAMILY!

On December 12, 2007 Defendant HHS OCR Rouse turned a deaf ear to the Harlans' cries and wrote only six lines relative to Harlans' 50-page complaint consisting of the many substantive, constitutional, and procedural violations committed by CPS. Harlan had complained to Defendant Rouse of OCR about Petrey's 1st Amendment violation of abducting Milton-[R pgs. 157 L19 158 L27]; many grave constitutional violations-[R 157 L24, 163 L2-L13 175 L22] astounding statistics showing

discrimination practices were committed by CPS managers and directors, and that CPS Houston removed far too many blacks from their homes-[R 153 L8] What response from CPS warranted Rouse's arbitrary decision? Was there a response from CPS and why weren't the Harlans allowed a chance to respond?

The astounding statistics and Chronicle's interview with Defendant Randy Joiner-director talking about discrimination by his managers are in the following newspaper articles. Interestingly, Joiner said a training session on "Undoing Racism" was being conducted to help managers such as Petrey and not caseworkers. Apx M(2 col. 3 L21) In the same newspaper article, Melanie Markley, CPS FIGURES SHOW RACIAL DISPARITIES IN SYSTEM, Houston Chronicle, February 10, 2005 shows "Black children in the Houston area are three times more likely to be removed from their homes and placed in the foster care system than children in white or Hispanic families" by CPS . . . . . "Last year blacks statewide made up 12.6 % of the youth population but 26 percent of the children removed from their homes by CPS. In the Houston area, blacks were 17.9 percent of the population and 40.2 percent of those taken into CPS custody." Apx M(1 col. 1 L1 col. 2 L9) The 5th Circuit has long adhered to the theory that "figures speak and when they do, Courts listen," *Brooks v. Beto*, 366 F.2d 1, 9 (1966) and appellants clearly made out a prima facie case of racial discrimination. The state of Texas cannot administer their adoption program in such a manner that black children are deprived of homes. In failing to work at

placing and leaving black children in black homes to the same extent that it does for whites and Hispanics, CPS has denied Milton and other blacks the equal protection of the laws. Rouse just wrote OCR "found no evidence that CPS took actions based on a racial bias in this case." Apx I(1 L38) "Black children are overrepresented in the Texas foster care system and are less likely to be returned home or adopted once they are removed, according to a new state study." Apx M(3 1st col. L8)

Yet, Rouse failed to acknowledge the statistical and factual evidence which can be used to show discrimination. In *Wade v. Mississippi Cooperative Extension Serv.* 528 F.2d 508 1976, the court wrote "In employment discrimination action, statistical evidence alone may enable plaintiffs to satisfy the initial burden of showing discrimination." Therefore, CPS statistics do show discrimination. Petrey's removal of Milton and other similarly situated blacks is in violation of the Fourteenth Amendment and Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000. This court decided the state could not administer the referral program in such a manner that black children are deprived of equal opportunities and benefits. *Player v. State of Alabama, Dept. of Pen. & Sec.,* 400 F.Supp. 249 (1975) This CPS discriminatory practice violation resulted because of the disparity of blacks versus other races being removed from their homes. *Hawkins v. Shaw, Mississippi*, 437 F.2d 1286 (5th Cir.,1971) Milton was denied a permanent loving Christian home. In failing to provide a permanent home for Milton to the same extent that it does for whites or Hispanics, CPS

has denied Milton and other blacks the equal protection of the laws. *Player, p. 257* CPS denied Harlans their precious son. **"No person in the United States shall on the ground of race, color, or national origin, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. 2000d)** *Shannon v. United States Dept. of Housing & Urban Dev.* 436 F.2d 809 (1970), p. 819

But despite the many alleged violations, Defendant HHS Ralph Rouse surrendered his sovereign immunity and OCR enforcement duties and committed an abdication of OCR's statutory duty considering CPS violations, CPS discrimination and discriminatory statistics, and the grave retaliation because of Harlan's protest to court. The severity and magnitude of Harlans' allegations (abduction of a child and no hearings) commanded and required a larger and more thorough investigation with a hearing process. This Dallas HHS decision-Apx I(1) was arbitrary because there was no hearing, no thorough investigation into all the issues raised, and the Dallas office never gave the Harlans CPS response to the allegations. [R 175 L12] What defense did CPS relay to this Dallas office? Did Rouse make a decision without CPS providing defense for the allegations? Rouse also never stated the reason(s) why Milton was removed; did he make this decision without knowing why Milton was removed? Rouse did not explain what standard of review he employed. "Discretion without criteria for its exercise is authorization of arbitrariness." *Brown v. Allen,* 344 U.S. 443, 496

Rouse's decision has no rational basis and it should be examined for error; there were no reasons to support his decision considering the statistics and the many violations committed by Petrey. *Concerned Women for America, Inc. v. Lafayette County*, 883 F.2d 32, 34 (5th Cir. 1989) Did Rouse correctly construe HHS enforcement obligations?

Rouse failed to review "the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part." 45 C.F.R 80.7(c) or where CPS failed to comply with the Act of 1980 which informs the states what is necessary to receive federal funds for foster care Title IV-E: the state "shall have a plan approved by the Secretary [of **Health and Human Services**] which-(15) . . . reasonable efforts will be made (A) prior to placement of a child in foster care to prevent or eliminate the need for removal of the child from home, and (B) to make it possible for the child to return to his home. . ." Rouse chose to overlook or excuse CPS violation of not making any effort to return Milton to the Harlans. There was no reason not to return Milton to the Harlans' home. Petrey was successful in denying Harlans equal protection of the law. In addition, if Petrey had done her duty, the judge presiding over the required hearings could had sent Milton back home in a few weeks or months after the initial or adversary hearings. This is what happened with the white community who received due process in a timely manner and now most of the parents have their children back. [R 180 3rd col. L45 initial hearing 181 3rd col. L7-L13 ("explore alternatives before removing any

children.")] In regards to this sect, the court found DFPS had taken emergency custody of children before fully litigating the issue of whether parents should continue to have custody of the children. *In re Texas Dept. of Family Protective Services* 255 S.W.3d 613 (Sup. 2008) Harlans and their son (black) were denied this same protection the Sect (white) received. Sect children were removed, but given initial hearings and the return of their children. Harlans' son was removed, but denied initial hearing and any attempt to return their son. Basic to any complaint of denial of equal protection must be shown that persons or groups being treated differently are similarly situated and that their disparate treatment by state is either without any rational basis or is based on some invidious factor such as race. *Davis v. Georgia State Board of Education* 408 F.2d 1014 (1969)

QUESTION 3 Did the lower federal courts failed to determine whether defendants abused his or her privilege to assert qualified, sovereign, or Eleventh Amendment immunity defenses relative to Harlans' claims which involved 1st, 14th, and §1983 violations?

ISSUE 3

The lower courts and defendants' attorney essentially gave Defendant Petrey and Defendant Hable the **same** assessment despite **different** offenses. Is this the American way? The lower courts and the defendants' attorney failed to access **each** individual defendant or claim; instead they accessed claims relative to a **group** of defendants. Grouping all state

then federal claims, the lower courts committed an abuse of discretion by not determining each claim or challenged activity separately and then not considering the relevant evidence for each claim. *Marrero v. City of Hialeah*, 625 F.2d 510 L29 (1980) The 5th Circuit also failed to perform a de novo review of the legal claims and questions such as (I) Abrogated Eleventh Amendment defense, (II) Abrogated qualified immunity and sovereign immunity defenses- (Stigmatizing charges, liberty interests and property interest implications), (III) Abrogated qualified immunity and sovereign immunity defenses-(1st & 14th Amendment violations and Chapter 262 violations), and (IV) the severity of Harlans' constitutional rights violated and defenses immunity sacrificed.

(I) Abrogated Eleventh Amendment defense But FAM§262.104-Apx K(5) dictated Milton could had only been removed without a court order only for certain conditions (1)(2) immediate danger to the physical health or safety of Milton (3)(4) sexual abuse (5) controlled substance problems. Petrey's reasons (signature and counseling issues) for Milton's 'removal' were unacceptable and vastly different from the **authorized reasons**. Therefore, Petrey could only have picked Milton up with a judge's order for the unauthorized reasons in her letter. The Eleventh Amendment also does not **preclude** claims based on a contention that the state officer acted in excess of his or her authority. *Pennhurst v. Halderman,* 465 U.S. 89 at 109-111 Violating the Fourteenth Amendment and FAM §262.104, 'Judge' Petrey abducted Milton

without a hearing or a judge's order on the same day case workers had gone to Harlans' home and agreed on a new adoption plan to fix the problems. Apx G.(p. 6 L33 28) Apx H(p. 1 L29 28) Of course, if an official is acting outside the scope of his authority, he is entitled to no immunity at all. *Butz v. Economou*, 438 U.S. 478, 98 S. Ct. 2894 (1978) It follows directly that Petrey who violated state law and federal law is also **stripped of state authority** for purposes of the Eleventh Amendment. *Ex parte Young*, 209 U.S. at 123 But even CPS Defendant Hable along with Defendant Chapmond wrote about "a judge must also approve the decision regarding the child's removal, placement and legal status." [R p. 141 L34] The 5th Circuit being partial 'overlooked' *Hafer, Ex parte Young, Pennhurst, and Butz* which proved Petrey lost her immunity. Harlans' son was abducted by a state **government** officer in America!!!

(II) Abrogated qualified immunity and sovereign immunity defenses-(Stigmatizing charges, liberty interests and property interest implications) On 3/11/2002 Caseworker Strong wrote in the first adoption plan "Milton has been placed in the home of Mr. and Mrs. Harlan for the purpose of adoption. This is intended to be a permanent placement for Milton. The family plans to consummate the adoption after the child has been in the home at least six months. . . . . Milton was in a foster home. . . . . .He is in a permanent home at this time." [R 81 L40 L49] Claim under §1983-'Removing Milton and then never returning Milton' **stigmatized** the Harlans' reputation in conjunction with the lost of their son to

another 'permanent adoptive family'. [R 240 L7] But Milton was already in a 'permanent adoptive family' with the Harlans. How could Milton be placed in two permanent homes without the required initial hearing and then the required termination hearing upon removing Milton?

"Stigmatizing charges certainly . . . deprived petitioner of liberty without due process of law..... "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." " *Owen v. City of Independence*, 445 U.S. 622, 633 n.13; *Board of Regents v. Roth*, 408 U.S.564, 573 Also, the 5th Circuit ruled when the government employs an individual, it may not terminate the relationship in a manner which "might seriously damage his standing and associations in his community or foreclose" his freedom to take advantage of other employment opportunities without affording him" a due process hearing at which he can make a fair fight to clear his name" *Dennis v. S & S Consolidated Rural High School District*, 577 F.2d 342-343. Likewise, when CPS 'engaged' the Harlans to adopt and raise Milton, it could not terminate the relationship in a manner which might seriously damage their jobs, tenure, promotions, and standing in the community, or foreclose their freedom to take advantage of OTHER ADOPTION OPPORTUNITIES! CPS' **denial of due process** caused the Harlans the lost of their one and only child. CPS denial of due process has foreclosed Harlans' freedom or right to adopt; what will the Harlans put on applications to adopt? Liberty interest and reputational interest

have been implicated and denied. Surprisingly, the 5th Circuit panel also wrote "Moreover, plaintiff's failure to show that the defendants violated any of plaintiff's constitutional rights precludes all of their claims" Apx A(3 L6) Again, the 5th Circuit panel abused its discretion by ruling on the evidence and then erroneously. "A court's task "in ruling on a Rule 12(b)(6) motion 'is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.' " " *Official Committee v. Coopers & Lybrand*, 322 F.3d 147

Harlans' family, church, friends, and ex-principal wondered what the Harlans did to their son and why their son was **never** returned to their home not even one time. Harlan's ex-principal had met Milton previously and he asked why Milton was removed? [R 438 L24-L26] Did the Harlans starve Milton? Was Milton sexually abused? Did the Harlans use drugs while Milton was in their home? "When government impairs interest that individual has in being free to move about, live, and engage in livelihood without burden of unjustified label . . . . . which also inescapably harms an individual's protected business, reputational interests arise to a level of liberty interest and Fourteenth Amendment demands no less than full compliance of due process of law. 42 U.S.C.A. §1983; U.S.C.A. Amend. 14." . . . . . Harlans "were not afforded even the bare elements of due process any time and thus certainly have stated a claim upon which relief can be granted," *Marrero v. City of Hialeah*, 625 F.2d 501 520 (1980)

"School boards are "persons" subject to liability

under 42 USCS §1983 for violating another person's federally protected rights, and thus are not wholly immune from suit under Section 1983" *Monell v. New York City Dept. of Soc. Serv.* 436 US 658, 56 L Ed 611 "Since section 1983 . . . impose liability upon "every person" who, under color of state law, deprives another of his civil rights, courts are naturally loath to cloth any person with immunity which would frustrate statue's design of providing vindication of those wronged by misuse of state power." *Marrero v. City of Hialeah*, 625 F.2d 499, 510 (5th Cir. 1980) Likewise, Petrey and the other defendants are not immune from suit under Section 1983.

(III) Abrogated qualified immunity and sovereign immunity defenses-(1st & 14th Amendment violations and Chapter 262 violations) Causing FRAP 8(a) & 12(b)(6) conflict with *Ashcroft, Twombly, Ryland, Memphis,* the 5th Circuit panel again **rejected Harlans' true statements on respondents' sacrificed defenses and accepted** the lower courts and CPS opinions and wrote "The district court also correctly dismissed. . . . . the individual state defendants Petrey, Joiner. Chapmond and Hable, on the basis of qualified immunity" .Apx A(2 L26) Also Judge Gilmore of the federal district court had written "Plaintiffs . . . cannot overcome Defendant's qualified immunity defense. . . . . 12(b)(6)" Apx B(2 L20-L21) CPS Attorney Bennett also wrote "Plaintiffs' contention that they were denied due process when DFPS removed MRW from their foster care is untenable." Apx H(2 L3) Bennett additionally claimed Harlans were not entitled to Section 262 protection and wrote in response to Harlans' brief "They were not entitled to any of the

protections or processes set forth in Family Code Section 262. The appellants were still in the preadoptive stage." Dbrf(pg. 12 L10-L18)

But, how did the 5th Circuit overlook Harlans' many constitutional and substantive allegations in the Complaint, Brief(pgs. 23-55), and other pleadings?

(IV) The lower federal courts should have decided whether Petrey or the other defendants abused his or her privilege to assert qualified immunity defense or any defense relative to Harlans' claims. *Ryland v. Shapiro* 708 F.2d at 975 (1983) Brief(37 L20)

Using *Hare v. City of Corinth Miss.*, 135 F.3d 321,325, 326, the resolution of this qualified immunity issue is a three-step process requiring the reviewing court to determine:

(1) whether Petrey/CPS violated Fourteenth Amendment, §1983, and statutory law-Apx K when she intentionally failed to:

a) file required lawsuit with intent to deny Harlans access to courts-

FAM §262.105(a)-K(3) "(1) file a suit affecting the parent-child relationship"

b) arrange required initial hearing with intent to deny Harlans due process and the required adversary hearing.

§262.105(a) "(3) request an initial hearing to be held by no later than the first working day after the date the child is taken."

§262.106 "(c) If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker or

custodian" **Which of these labels don't apply to the Harlans?**

§262.201(a) "a full adversary hearing shall be held not later than the 14th day after the child was taken." K(4) In *re E.D.L., 105 S.W.3d 679* (Tex. App.-Fort Worth 2003, n.p.h) "purpose of §262.201 is to afford parents the opportunity to challenge TDPRS's right to retain any children whom TDPRS has taken into custody". So how was CPS able to make legitimate, just, and legal decisions without hearing from the Harlans and giving them hearings and due process as the law requires? **They were not able to make legitimate decisions without the required hearings and due process.**

"Doth our law judge any man, before it hears him, and know what he doeth?" (John 7:51) *"Flesh and blood may pass judgment on a man if it hears his words, if it does not hear them, it can not establish its judgment" (Bruce, The Gospel of John, Eerdmans)*

c) to give Harlan reasons for removing Milton until after 35 days! Petrey violated the due process clause of the Fourteenth Amendment and FAM §262.109(b) [R p. 157 L24] when she removed or authorized the removal of Milton without giving Harlans the required "written notice . . . . not later than the first working day after the date" Milton was taken into possession with the **unauthorized** reasons. She spitefully gave the Harlans the reasons after Milton had been gone for over 35 days on March 6,

2003 and not February 27, 2003. Apx F(pgs. 1 L5 February 27 3 L4 March 6 03) Only a criminal would had waited 36 DAYS!

d) make even one attempt to return Milton to the Harlans' home as required by state and federal law. Why didn't CPS work even a 'little bit' at returning Milton to the Harlan's home as mandated by federal law 42 U.S.C.A. §625(a)(1)(C); §671(15) and state law-FAM §262.2015(a) §262.201(b)(3)-"reasonable efforts have been made to enable the child to return home"? **This is evidence of violation of equal protection of the laws.** But the 5th Circuit has held if "state officers conspire . . . .in such a way as to defeat or prejudice a litigants rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law." *Dinwiddie v. Brown*, 230 F.d 465, 469(5th Cir. 1956) But more recently, the 5th Circuit found conduct by state officers which results in delay in the prosecution of an action in state court may cause such prejudice. *Rheuark v. Shaw*, 628 F.2d 297 (5th Cir., 1980)

(2) whether right clearly established and Petrey knew her actions were unconstitutional; Petrey was a 'director'; she surely knew the procedures for removing a child from his or her home and she knew hearings were a must. "We have held that qualified immunity would be defeated if an official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the

malicious intention to cause a deprivation of constitutional rights or other injury . . " *Harlow v. Fitzgerald*, 457 U.S. 815 Surely, most reasonable public officials would agree Petrey should have given the Harlans reasons within a couple of days and not the 36 days and should have filed lawsuit and arranged the initial hearing for the sake of due process and for the possible return of Milton to his home. *Anderson*, 483 U.S. at 639 But even CPS Defendant Hable along with Defendant Chapmond wrote about required procedures "a judge must also approve the decision regarding the child's removal, placement and legal status." [R p. 141 L34] The other defendants knew Petrey broke the law. *Harlow,* p. 818 brings out if the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. But, these state actors were entitled to qualified immunity unless they had violated clearly established rights of which a reasonable official would have known. *Hale v. Townley*, 45 F.2d 914, 917 (5th Cir. 1995)

(3) whether Petrey's "conduct was objectively unreasonable" and extreme. Petrey removed or authorized the removal on the same day-January 28, 2003 that Caseworkers Strong and Rohan had gone to the Harlans to finalize the new adoption plan that would have fixed the 'problems'. It was surely unreasonable to remove Milton on the same day 'problems' were being solved or worked out. Milton's removal was not planned or authorized by a judge; Petrey retaliated against Harlan's protest and acted quickly without following any law or guideline

by abducting Harlans' son.

CONCLUSION

A Texas state employee can remove a child from his or her adoptive parents home without giving a chance to challenge the removal? FAM §262.201(a) The right to marry, to establish a home and bring up children is also a fundamental **liberty interest** protected by the Fourteenth Amendment. *Meyer v. State of Nebraska,* 262 U.S. 390, 43 S.Ct. 625 (1923) The lower courts failed to give Harlans their **due**; their son was abducted by a **government** representative in America for "various authorized reasons" and without the required due process. The lower courts' dismissal and affirmation of Harlans case denied Harlans opportunity to litigate their case because there was not even **one** set of facts demanding relief? How did this occur in **America**? Psalm 82 God is still on the throne! Thank God for His unending Grace and Mercy.

The Fourteenth Amendment provides, in its first section, that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law." Section 1 alone allows citizens to assert that a state action against them violates section 1 rights. Under the most modest interpretation, section 5 gives Congress the power to enforce section and to create a cause of action

allowing those whose rights are violated to also bring a lawsuit. If a court concludes that a federal law was adopted under §5, a state may be sued for it. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) Section 5 of the Fourteenth Amendment gives Congress the power to create causes of action against the state to enforce the Fourteenth Amendment. *Alden*, 527 U.S. at 756-757

'Thank You' to this Honorable Supreme Court of the United States for this opportunity to appeal. The petition for a writ of certiorari should be granted or Harlans' case should be remanded.

Sincerely,

Gregory Harlan
5722 Tiffany
Houston, Texas 77085
(713)721-1317

Marvinell Harlan, PRO SE
5722 Tiffany
Houston, Texas 77085
(713)721-1317

Date: December 10, 2010

No. _____

In the Supreme Court of the United States

_____

Marvinell & Gregory Harlan-
PETITIONERS

VS.

Texas Department of Regulatory & Protective Services (CPS), et al.
& Department of Health and Human Services-(DHHS), et al.

RESPONDENTS

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Appendix K(1-2) Constitutional and Federal Law
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Appendix M(3) -Melanie Markley, Study links racial disparity at CPS Houston Chronicle, Feb. 10, 2005

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 28, 2009
Charles R. Fulbruge III
Clerk

No. 09-20207

Summary Calendar

MARVINELL HARLAN and GREGORY HARLAN
Plaintiffs-Appellants

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; RALPH ROUSE, Individual Capacity; KENDRICK SMALL, Attorney, Individual Capacity; TAMARA MILLER, Deputy Director, Individual Capacity; TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES (CPS); JANICE PETRY, FAD Program Director, Individual Capacity; RANDY JOINER-HOUSTON, CPS Director, Individual Capacity; THOMAS CHAPMOND, Executive Director, Individual Capacity; BETTY HABLE, Ombudsman Director, Individual Capacity-
Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:08-CV-1943

Before DAVIS, SMITH and DENNIS, Circuit Judges.
PER CURIAM:*

*Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.. R. 47.5.4.

Plaintiffs Marvinell and Gregory Harlan appeal the dismissal of their suit on defendants' motion to dismiss. Plaintiffs claim that the defendants violated their constitutional rights when the Texas Department of Family and Protective Services ("DFPS") removed a minor child from their foster care. We agree with the district court's disposition of this case.

The district court correctly ruled that it did not have subject matter jurisdiction over the Department of Health and Human Services because the department's sovereign immunity protects the federal government from this suit. Absent an express waiver of immunity, the United States, its departments and employees in their official capacities are immune from suit. *Hercules Inc. v. United States,* 516 U.S. 417, 422 (1996); *In re Supreme Beef Processsors, Inc.*, 468 F.3d 248, 251-252 (5th Cir. 2006). Similarly, the claims against the Texas DFPS are barred by the Eleventh Amendment which deprives federal courts of jurisdiction to hear a suit by a private citizen against a state in federal court. *Alabama v. Pugh,* 438 U.S. 781, 781-82 (1978); *Okpalobi v. Foster,* 244 F.3d 405, 411 (5th Cir. 2001).

The district court also correctly dismissed the three federal employees, Small, Rouse and Miller, for failure to state a claim and the individual state defendants, Petrey, Joiner, Chapmond and Hable, on the basis of qualified immunity. Plaintiffs failed to plead sufficient facts to demonstrate that the defendants' conduct violated any constitutional right. The plaintiffs' adoption of the minor

child was never consummated. The plaintiffs cite no authority, clearly established or otherwise, that indicates that they had any protected constitutional rights or interests related to that child. Moreover, plaintiffs' failure to show that the defendants violated any of plaintiff's constitutional rights precludes all of their claims.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GREGORY HARLAN MARVINELL HARLAN	§	
Plaintiffs	§	
Versus	§	CIVIL ACTION NO. 08-1943
DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.	§	
Defendants.	§	

ORDER

Pending before the Court is a motion to dismiss Plaintiffs' complaint filed by the following Defendants: the Texas Department of Family and Protective Services ("DFFS"), which was formerly known as the Texas Department of Protective and Regulatory Services; and DFPS employees Janice Petrey ("Petrey"), Randy Joiner ("Joiner"), Thomas Chapmond ("Chapmond"), and Betty Hable ("Hable") in their individual capacities (collectively, "State Defendants"). (Instrument No. 13). Also pending before the Court is a motion to dismiss filed by the following federal Defendants: the United States Department of Health and Human

Services ("HHS"); and HHS Office of Civil Rights employees Tamara Miller ("Miller"), Ralph Rouse ("Rouse"), and Kenrick Small ("Small") in their individual capacities (collectively, "Federal Defendants"). (Instrument No. 27). The Court, having reviewed the motions and the arguments of counsel, is of the opinion that both motions should be GRANTED, (Instrument Nos. 13, 27). The Court finds that Defendant DFPS is entitled to sovereign immunity under the Eleventh Amendment of the United States Constitution. The Court therefore lacks subject matter jurisdiction over Plaintiffs claims against DFPS and dismisses them with prejudice under Federal Rule of Civil Procedure 2(b)(2). (Instrument No. 13).

With respect to Plaintiffs' claims against Defendants Petrey, Joiner, Chapmond, and Hable, the Court finds that Plaintiffs have failed to state a claim upon which relief can be granted. Plaintiffs' adoption of Milton Williams was never consummated. Therefore, Plaintiffs fail to allege any facts showing a violation of a clearly established right to a court order or hearing and cannot overcome Defendants' qualified immunity defense. Per Federal Rule of Civil Procedure 12(b)(6), the Court dismisses with prejudice Plaintiffs' claims against Defendants Petrey, Joiner, Chapmond, and Hable. (Instrument No. 13).

The Court further finds that Plaintiffs' claims against Defendant HHS is barred by sovereign immunity and accordingly dismisses them with prejudice under Federal Rule of Civil Procedure 12(b)(2). (Instrument No. 27).

Finally, due to insufficient service of process, the Court lacks personal jurisdiction over Defendants Rouse, Small,

and Miller. Fed R. Civ. P. 12(b)(2), (5). Even if the Court had personal jurisdiction over these Defendants, Plaintiffs have failed to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6) Plaintiffs cannot bring Fourteenth Amendment claims against federal actors, nor have Plaintiffs pled facts showing Federal Defendants violated any of Plaintiffs' constitutional rights. *See Newsome v. E.E.O.C.*, 301 F.3d 227, 233 (5th Cir. 2002). Accordingly, the Court dismisses with prejudice Plaintiffs' claims against Defendants Rouse, Small, and Miller. (Instrument No. 27).

For the foregoing reasons, the Court GRANTS State Defendants' motion to dismiss (Instrument No. 13) and Federal Defendants' motion to dismiss (Instrument No. 27) and DISMISSES all of Plaintiffs' claims with prejudice.

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the 2nd day of March, 2009, at Houston, Texas.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GREGORY HARLAN,	§	
MARVINELL HARLAN,	§	
Plaintiffs,	§	
	§	
Versus	§	CIVIL ACTION NO. 08-1943
	§	
	§	
DEPARTMENT OF HEALTH AND HUMAN-SERVICES, *et al*	§	
Defendants.		

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for New Trial (Instrument No. 34) is DENIED.

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the *31st* of March 2009, at Houston, Texas.

VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

APPENDIX B(4)

United States Courts
Southern District of Texas
FILED
APR 20 2009
Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

MARVINELL HARLAN, & GREGORY HARLAN	§
Plaintiffs, Pro Se	§ CIVIL ACTION NO. H-08-1943
vs.	§
DEPARTMENT OF HEALTH and HUMAN SERVICES , ET AL.	§
Defendants	§

PLAINTIFF'S MEMORANDUM IN SUPPORT OF FRCP 52 MOTION TO ADD OR AMEND FINDINGS OF FACT AND CONCLUSIONS / IF THIS FRCP 52 MOTION IS NOT GRANTED, THIS IS A MOTION TO TREAT THIS FRCP 52 MOTION AS A FRCP 60(b) MOTION OR MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT

Marvinell Harlan
5722 Tiffany
Houston, Texas
77085

ORAL HEARING IS REQUESTED

APPENDIX B(5)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARVINELL HARLAN, and GREGORY HARLAN, *Plaintiffs,* Pro Se,	§	
	§	H-07-1961
TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES, and JANICE PETREY, *Defendants.*	§	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

On this day the Court considered Defendant's Motion to Dismiss Plaintiff's Complaint. After due consideration the Court finds Defendant's motion is meritorious. It is therefore,

ORDERED that Defendant's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that all of Plaintiffs' claims against Defendant Texas Department of Protective and Regulatory Services are dismissed in their entirety.

DATED: *Dec. 14, 2007*

U.S. DISTRICT JUDGE

APPENDIX B(6)

171

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 09-20207

U.S. COURT OF APPEALS
FILED
MAR 05 2010
CHARLES R. FULERUGE III
CLERK

GREGORY HARLAN; MARVINELL HARLAN
Plaintiffs-Appellants

versus

UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; RALPH ROUSE, Individual Capacity; KENDRICK SMALL, Attorney, Individual Capacity; TAMARA MILLER, Deputy Director, individual capacity; TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES (CPS); JANICE PETREY, FAD Program Director, Individual Capacity; RANDY JOINER-HOUSTON, CPS Director, Individual Capacity; THOMAS CHAPMOND, Executive Director, Individual Capacity; BETTY HABLE, Ombudsman Director, Individual Capacity,

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Texas, Houston

---

ON PETITION FOR REHEARING EN BANC

(Opinion 12/28/09, 5 Cir., _____, _____, F.3d_____)

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

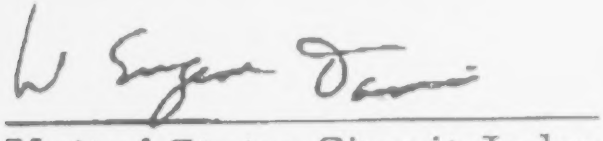
PER CURIAM:

APPENDIX C(1)

(x) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel or judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:



United States Circuit Judge

REHG6A

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 10, 2010

Marvinell Harland
5722 Tiffany
Houston, TX 77085

RE: Harlan, et al. v. H&HS, et al.
(USAP5 No. 09-20207)

Dear Mr. Harland: The above-entitled petition for writ of certiorari was postmarked May 28, 2010 and received June 3, 2010. The papers are returned for the following reason(s):

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel, is attached. Rules 33.2 and 39. The motion must be signed.

No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

The petition fails to comply with the content requirements of Rule 14. A guide for in forma pauperis petitioners and a copy of the Rules of this Court are enclosed. The guide includes a form petition that may be used.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.A copy of the corrected petition must be served on opposing counsel. When making the required corrections to a petition, no change to the substance of the petition may be made. Sincerely,

William K. Suter, Clerk
/S/By: Clayton R.Higgins, Jr.
Enclosures (202) 479-3019
APPENDIX D(1)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 11, 2010

Marvinell Harlan
5722 Tiffany
Houston, TX 77085

RE: Harlan, et al. v. H&HS, et al.
(USAP5 No. 09-20207)

Dear Mr. Harlan:

Returned are 39 copies of the petition for writ of certiorari in the above-entitled case postmarked on August 7, 2010 and received on August 7, 2010, which fails to comply with the Rules of this Court.

The text of the petition and appendix must be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. The typeface of footnotes must be 10-point or larger with 2-point or more leading between lines. Rule 33.1(b).

The materials contained in the appendix have been photoreduced which is prohibited. The size of the print must comply in all respects with Rule 33.1(b).

Kindly correct the petition and appendix so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

This office shall retain one copy of the petition and your check in the amount of $300.00 in expectation of timely receipt of a properly prepared petition.

When making the required corrections to a petition, no change to the substance of the petition may be made.

APPENDIX IX

If Gregory Harlan is to be considered a petitioner, he must be listed on the cover of the petition and after the conclusion of the petition.

Sincerely,
William K. Suter, Clerk
By:
Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

D(2), pg. 2

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

October 20, 2010

Marvinell Harlan
5722 Tiffany
Houston, TX 77085

RE: Harlan, et vir. v. H&HS, et al.
(USAP5 No. 09-20207)

Dear Mr. Harlan:

The petition in the above-entitled case was postmarked on October 7, 2010 and received on October 14, 2010.

If you intend to pay the $300 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

All of the pages in the petition and appendix must contain margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. Rule 33.1(c).

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

Appendix D(3)

When making the required corrections to a petition, no change to the substance of the petition may be made.

Sincerely,
William K. Suter, Clerk
By:
Clayton R. Higgins, Jr.
(202) 479-3019

D(3), pg. 2

Enclosures

NO. 2003 33624

nca

IN THE MATTER OF THE MARRIAGE OF:

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
310TH JUDICIAL DISTRICT

Harlan, Gregory
vs.
In Re (Adoption)

FILED
Charles Bacarisse
District Clerk
JAN062004

ORDER OF DISMISSAL

On JAN 06 2004 came on the above entitled and numbered cause having been having been set for *Pre*TRIAL; and there having been a hearing held.

It is therefore accordingly ORDERED that this cause is DISMISSED FOR WANT OF PROSECUTION.

Signed and entered JAN 06 2004

Judge

APPENDIX E(1)

70

FILED: 09/25/2002

GENERAL ORDER OF THE COURT 30 308TH

2002-49137

HARLAN, GREGORY
PLAINTIFFS

JONES, ANGELUS CALDWELL
Attorney

NATURE OF ACTION

ADOPTION

VS.

DEFENDANTS

Attorney

SURETIES ON COST BOND:

Jury Fee Paid By:

SETTINGS

MAR 18 2003 (Movant present - all noticed & no one else appeared) (M for Substituted granted (Entry 3/25/03);

APR 03 2003 Parties appr. by atty; Hearing passed by agreement to May 7, 2003; Status Conf. passed; Mot to quash Service on TDPRS granted, order dated Oct 1, 2002 appointing Tammy Adams vacated. SL

JUN 12 2003 Pet appr. by atty, Motion to reinstate Denied. SL

APPENDIX E(2)

2003-33624

FILED: 06/18/2003

GENERAL ORDER OF THE COURT 310 ~~308TH~~

HARLAN, GREGORY
PLAINTIFFS

RICE, WILLIAM J. JR.
Attorney

NATURE OF ACTION

ADOPTION

VS.

DEFENDANTS

Attorney

SURETIES ON COST BOND:

Jury Fee Paid By:

SETTINGS

7/22/03 (All counsel of record present) GAL appointed per order - case reset to 7/29/03 @ 1:00pm;

JUL 29 2003 Parties app. by atty. Ad liten in other ct in trial set to Aug. 5, 2003 at 9am to AJ - appeal waived. Dr

AUG 05 2003 Pets app. w/ atty; TDPRS app. W/atty. Ad liten app. (CR- C. Torres-Miles); Hearing begun - recessed + passed by agreement. Dr

OCT 07 2003 (Respondent present/ R present (Gregory Harlan) / GAL present / TDPRS has no obj.) m for Psy. Exam passed / m for withdrawal - granted D/Order

APPENDIX E(3)

CAUSE NUMBER _____ GE . RAL ORDER OF COURT _____ JUDICIAL D. RICT

Oct. 16, 2003 Pets app w/atty; TDPRS w/atty; Ad litem; after hearing agreement reached; A.F.A. Cust. eval. ordered, Pets. to pay. Entry Oct. 23, 2003 at Hon. D

OCT 23 2003 S/E order for psychiatrical evaluation

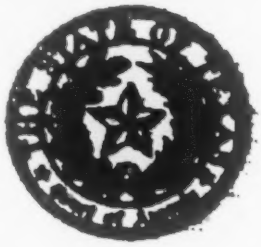
JAN - 5 2004 TDPRS app. w/atty; Ad litem & Pets w/atty; Pre-trial Conf. - Pets order for Custody eval. not complied with by Pets. - Case DWOPED. D

FEB 19 2004 Mov. app. Pro Se; TDPRS app Motions Denied - No jurisdiction D

MAR 17 2004 Appeal of Af's Ruling - denied;

APPENDIX E(4)

Dismissed and Memorandum Opinion filed August 23, 2005.



In The

Fourteenth Court of Appeals

NO. 14-04-00386-CV

IN THE INTEREST OF M.R.W.

On Appeal from the 310th District Court
Harris County, Texas
Trial Court Cause No. 2003-33624

MEMORANDUM OPINION

Appellants, Marvinell and Gregory Harlan appeal the trial court's order dismissing their case for want of prosecution. On June 18, 2003, the Harlans filed their original petition for adoption of a child, M.R.W. The Texas Department of Protective and Regulatory Services (the "Department) moved for the psychological or psychiatric evaluation of Marvinell Harlan. Mrs. Harlan agreed to undergo an evaluation. On October 23, 2003, the trial court signed an agreed order granting the Department's motion for a psychiatric evaluation and ordering that Mrs. Harlan to submit to a custody evaluation promulgated by the American Psychological Association. After the agreed order was entered,

Mrs. Harlan changed her mind and decided not to submit to the court ordered evaluation. Consequently, after a hearing on January 6, 2004, the trial court dismissed case for want of prosecution.

On appeal, the Department asserts the Harlans lacked standing under the Texas Family Code to bring their suit for adoption. We agree. Standing is a component of subject matter jurisdiction, which is essential to a court's power to decide a case. *Bland Indep. Sch. Dist. v, Bliss*, 34 S.W. 3d 547, 553-54 (Tex. 2000); see also *Texas Dep't of Trans. V. City of Sunset Valley*, 146 S.W. 3d 637, 646 (Tex. 2004) ("Standing is a constitutional prerequisite to maintaining suit.") The pleader is required to allege facts affirmatively demonstrating court's jurisdiction to hear the case. *Texas Ass'n of Bus v. Texas Air Control Bd.*, 852 S.W 2d 440, 446 (Tex. 1993). As an element of subject matter jurisdiction, standing cannot be waived and may be raised for the first time on appeal. *Waco Indep. Sch. Dist v. Gibson*, 22 S.W. 3d 849, 850 (Tex. 2000); *Texas Ass'n of Bus.*, 852 S.W. 2d at 445-46.

Section 102.005 specifically sets forth those parties who have standing to file an original suit for adoption:

> (1) stepparent of the child;
>
> (2) an adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period preceding the filing of the petition;
>
> (3) an adult who has had actual possession and control of the child for not less than two months during the three-month period preceding the filing of the petition;

(4) another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so.

TEX. FAM. CODE ANN. § 102.005 (Vernon 2002).

The Harlans' petition filed on June 18, 2003, sets forth, in relevant part, that they:

* * *

seek to adopt the following child and Petitioners request that said child be allowed to reside in their home for the requisite six (6) month period. . .

The Harlans do not allege any facts in their petition demonstrating jurisdiction under section 102.005. The Harlans do not assert that either one of them is a stepparent to M.R.W. as required by subsection (1), but, instead, admit they are not related to M.R.W. TEX. FAM. CODE ANN. § 102.005(1). Furthermore, by requesting that the child be allowed to reside in their home, the Harlans admit that they had not had actual possession and control of M.R.W. either "at any time during the 30-day period preceding the filing of the petition," or "for not less than two month during the three-month period preceding the filing of the petition" as required by subsections (2) and (3), respectively. *Id.* §§ 102.005(2) and (3). Finally, the Harlans do not allege in their petition that they had had substantial past contact with M.R.W. to warrant standing to file the petition to adopt, as required by subsection (4). *Id.* § 102.005(4).

The Harlans point out that their petition states M.R.W. "will have lived in the home of Petitioners for at least six

months when this case is heard." This statement, however, does not establish the requisites for standing under subsection. (2) or (3), which require that the party seeking to file an original petition for adoption have had actual possession and control of the child for a specified period of time prior *to filing the petition. See id.* § 102.005(2) ("at any time during the 30-day period preceding the filing of the petition");

§102.005(3) ("not less than two months during the three-month period preceding the filing of the petition"),[1] Standing cannot be established after the filing of a suit for adoption.

The Harlans also have included in the appendix to their appellate brief documents that are not part of the appellate record, including documents under a different trial court cause number. Because the attachment of documents as appendices to appellate briefs is not formal inclusion in the record on appeal, we cannot consider them. *Nguyen v. Intertez Inc.,* 93 S.W.3d 288, 293 (Tex. App.-Houston [14th Dist] 2002, no pet.); *Mitchison v. v. Houston Indep. Sch Dist.,* 803 S. W.2d 769,771 (Tex. App. Houston [14th Dist] 1991, writ denied); *see also Guajardo v. Conwell,* 46 S.W.3d 862, 864 (Tex. 2001) (stating that order not included in clerk's record would not be considered).

---

[1] It is apparent that the Harlans are attempting to establish standing under Section 102.003(9) of the Texas Family Code, which provides general standing to file suit to "a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition." TEX. FAM. CODE ANN. §102.003(9) (Vernon Supp. 2004-05). Without deciding whether section 102003(9) even applies to an original suit for adoption only, we observe that the Harlans have not alleged facts sufficient to establish standing because 102.003(9) requires the person filing suit to have had actual care, control, and possession of the child for six months ending not more than 90 days *prior to filing soft,* while the Harlans hope to establish standing by satisfying the requisite time period *after filing suit.*

Therefore, because these documents were not part of the trial court's record in this case, we will not consider them.

The Harlans assert documents attached to various motions they filed establish that M.R.W. had resided with them at one time. While we do not pass on the admissibility of documents attached to certain motions filed by the Harlan, we observe that those documents do not show that the Harlans had met the specific requirements of section 102.005 when they filed their petition on June 18, 2003.

Finding that the Harlans lack standing to file their suit for adoption, we conclude the trial court was without jurisdiction to hear this case. Accordingly, we dismiss this appeal.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Memorandum Opinion filed August 23, 2005. Panel consists of Justices Yates, Anderson, and Hudson.

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS AUSTIN TX 787

RE: Case No. 06-0076
COA #: 14-04-00386-CV
STYLE: MARVINELL & GREGORY HARLA
v. TEXAS DEPARTMENT OF REGUL

$ 00.24

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. The Motion for No. 2002-49137 and Other Documents to be made part of record and the Second Motion to Include Documents from No. 2002-49137 in record are denied.

MAIL TO:
MS. MARVINELL HARLAN
5722 TIFFANY
HOUSTON TX 77085

77085+3337

OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248
AUSTIN TX 787

HAPPY HOLIDAY

RE: Case No. 06-0076
COA #: 14-04-00386-CV
STYLE: MARVINELL & GREGORY HARLA
v. TEXAS DEPARTMENT OF REGUL

$ 00.24

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MAIL TO: MR. GREGORY HARLAN
5722 TIFFANY
HOUSTON TX 77085

TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

BOARD MEMBERS

EXECUTIVE DIRECTOR
Thomas Chapmond

Richard S. Hoffman
Chair, *Brownsville*
John R Castle. Jr
Dallas
Anne C. Crews
Dallas
Naomi W. Leda *HunrsWlle*
Catherine Clark Mosbachet *ffourron*
Ommy Salinas Strauch *San Antonio*

February 27, 2003
Gregory and Marvinell Harlan
5722 Tiffany
Houston, TX 77085

Dear Mr. and Ms. Harlan:

This is to follow up with you regarding plans for Milton, and recommendations for you regarding your possible continued interest in adoption.

As you are aware, when Milton was removed from your home, he was placed back with the foster family with whom he had lived prior to being placed with you. This foster family has now expressed interest in adopting Milton, and the agency is currently exploring this option for Milton.

In our work with you during Milton's placement, we encountered serious resistance from you in following through with recommendations for Milton made by a physician, the court, and lastly a psychologist. We expressed our concerns regarding these matters to you both in several meetings. Ultimately we developed a plan of service to require that you follow through with recommendations in order to consider finalizing your adoption of Milton. When you did not comply with signing the plan of service timely and appropriately, Milton was removed. 3 3

Ms. Harlin was clear with us that when she did not agree with recommendations, she would not follow them. She

also would change her accounts of what she had said, what she had agreed to, and things that had happened when confronted with information from other parties that called into question her statements or behaviors. Ms. Harlin stated that she viewed the recommendations as interference in your family life, and with your parenting and care of Milton. She thought you were being treated differently than other families. who encountered issues with their adopted children, though we explained at length, several times, that this was not the case. She also insisted that Milton had no issues serious enough to need professional help. She was adamant and unyielding in her beliefs. Her objections and resistance were unreasonable, given the information available. We could not even reach a decision to disagree, but for you to follow through with recommendations for Milton to get services.

I do not hold out hope that this agency can work successfully with you in placing a child for adoption in your home, given the difficulties we encountered in working with you during Milton's placement. You demonstrated pervasive and imbedded personal difficulties, or enablement thereof, that prevented you from working cooperatively to adopt a child with special needs. Your denial of concerns and resistance to cooperation were extreme. If you desire to learn about your personal difficulties in depth, counseling and possibly psychological evaluations would be appropriate. This is, of course, at your own discretion.

Sincerely,

Supervisor

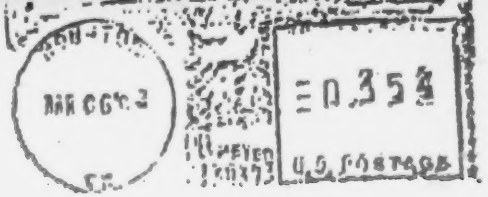
cc:File Ledra C. Johnson, FAD

Metropolitan One Church One Child

s / a
Janice Petrey
FAD Program Director

TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES
P.O. Box 16017
Houston, TX 77222-6017

PRESORTED
FIRST CLASS



APPENDIX F(3)

Gregory & Marvinell Harlan
5722 Tiffany
Houston, Texas 77085

AAINSMP 77085

Joan Weltzien, Ed.D.

Licensed Psychologist

Dear *Parents:*

I'm looking forward to seeing you and *Milton* on *Jan 30th* at *2-3:30.* I will do all I can to give you the best of care, and in order to do that, I've prepared a list of question and answers which may acquaint you with my office and policies. I think that the more you know about my policies, the methods of practice, the more I can be of service to you and avoid possible annoyances and frustrations through unnecessary misunderstandings.

WHAT DO I TELL MY CHILD/ADOLESCENT? (if applicable)
It may be helpful to explain that the reason you will be meeting with me is that you are concerned about his/her/your behavior or school work, or whatever is the truth and that you want to get some ideas about how to help.

WHAT DO I BRING TO THE FIRST 1NTERVIEW?

(1) The enclosed information form, completed.

(2) If pertinent, school records including achievement scores (ITBS, STBS), report card, samples of recent school work, previous evaluations, work history.

WHAT IS THE COST?

My cost per 45 minute session is $125.00. A full hour is $165.00. Payment is expected at the end of each session unless other arrangements are made. At your request, you may receive a receipt at the end of the month. I do not accept credit cards.

INSURANCE

I am on HAS as a provider. I have agreed to bill this company directly and accept assignment. I ask that you pay the co-payment at the end of each session. I am not a provider on any other insurance plan effective September 1, 2001.

IS THERE A CHARGE FOR TELEPHONE CALLS/SCHOOL VISITS/OTHER CONSULTATIONS?

School/professional consultations or other times which require my professional input wi11 be billed at the regular session rate. Of course, you will be advised and permission obtained.

WHAT ABOUT CANCELLATION?

No charge will be made for cancellations made with a twenty-four (24) hour notice; for cancellations made less than twenty-four (24) hours before the scheduled appointment time, a regular fee will be charged. My answering service is "on" twenty-four (24) hours per day, seven days per week. Very important, insurance companies do not cover non-canceled appointments.

WHAT IF PSYCHOLOGICAL TESTING IS NEEDED?

CHILD:.• ADOLESCENT • ADULT • FAMILY

Psychotherapy
)1,/stic Evaluations
; c a l Consultation

3000 Weslayan
suite 255
Houston. Texas 77027
(713) 621-6665

ADOPTION PLAN

Family Name:	Date of Plan	Date Review Due:
Harlan, Gregory	1/16/2003	

I. Family Section

A. Family Needs

The Harlan family has experienced some adjustment problems that are not unusual to an adoption placement Milton has exhibited some behavior problems. in placement which resulted in a recommendation being made and court ordered that he receive a psychological assessment Mr. and Mrs. Harlan did not agree that the assessment was needed but did comply. Milton's assessment indicated that he could benefit from therapy.

The consummation of this adoption has not taken place because of the needs of Mr. and Mrs. Harlan and Milton that must be followed through on prior to consummation. The plan of action outlined to Mr. Harlan on 12-20-02 for meeting those needs are as follows:

1. Milton is to be scheduled and taken to therapy by Mr. Harlan by January 31, 2003.

L27

2. Mr. and Mrs. Harlan are to follow the recommendations of Milton's therapist. The recommendations may include attending therapy with Milton.

3. Mr. and Mrs. Harlan are to initiate parenting classes within 60 days. The parenting classes need to meet agency approval prior to the couple attending. Mr. and Mrs.Harlan are to follow through on all recommendations resulting from the parenting classes.

4. This agency will need positive feedback from Milton's therapist and the Harlan's parenting classes, in order to recommend consummation of this adoption to the court. Mr. and Mrs. Harlan need to understand that although our recommendation could be in favor of the adoption, we cannot predict the ad liter's recommendations.

5. Mr. and Mrs. Harlan will refrain from using physical discipline with Milton.

6. Mr. and Mrs. Harlan will need to sign the adoption plan.

This plan of action was outlined to Mr. Harlan, in person, on 12-20-02, and was agreed upon by him in the presence of Janice Petrey; FAD Program Director, Ledra C. Johnson, Annette Greene, and Marecia Strong. Mrs. Harlan left the meeting prior to presenting these recommendations to Mr. Harlan stating she was pulling out of the adoption of Milton. Mr. Harlan however, felt reasonably sure that he could convince his wife to follow the plan of action outlined in order that they are allowed to adopt Milton. Mr. Harlan was made aware at that time an adoption plan would be written and both he and his wife would have to sign and follow through on what was outlined in the plan. Mr. Harlan stated that they would.

B. Workers Role

The caseworker for the Harlan home will visit the home on a monthly or more frequently if needed.

C. Support Services for Family

Mr. and Mrs. Harlan will schedule therapy for with Dr. DeAlmeida or another therapist of their choice by the end of January 31, 2003. Ms. Petrey gave Mr. Harlan a name and number of a therapist, on 12/20/02 that the family could consider. The family is to seek parenting classes on their own and will receive Input on recommendations of parenting classes from this agency at their request only. This family prefers little to no input from this agency on where to go for support services.

Name of child in adoptive placement:	Birth date:
Milton	11/17/1996

Date of Adoptive Placement	Projected Date for Finalization
3/11/2002	7/1/2003

II. Child's Section

C. The objective of this placement is to enable the development of a parent/child relationship in a permanent placement for the child.

Additional Objectives (if any) are:

It appears that a parent/child relationship has developed between Milton and Mr. and Mrs. Harlan. However, the Harlans will need to follow through on the objectives outlined earlier in this plan in order that the relationship between all parties involved be a healthy one.

D. Appropriateness of the Home- Describe the appropriateness and safety of the home to meet the child's long term needs and describe the continuing necessity for placement:

It appears that Milton has bonded with Mr. and Mrs. Harlan. Although them are some definite concerns regarding discipline and parenting style, It has been determined that It would be in the best interest of the child, at this time, to allow him to remain in his current placement. Mr. and Mrs. Harlan both admitted to using physical discipline with Milton. Again, Mr. and Mrs. Harlan will need to follow the plan outlined, in order for the placement to continue.

E. Needs /Progress

Basic: all children have certain age - specific needs related to their day-to-day care and development. These include routine medical and dental care and treatment, basic physical needs, a safe stimulating and nurturing environment, age-appropriate recreational activities, and peer relationships:

Specific: Identify the child's specific needs and describe how they will be met. Explain why the services are appropriate. Include court ordered services. (Describe the progress made in meeting the needs listed in the last plan and add any new needs that have been identified).

Medical/Dental:

All medical and dental needs are being met. Milton has asthma and is being treated appropriately when the need arises.

Developmental/Educational:

There are no apparent developmental or educational needs. Milton is a very intelligent child for his age and does quite well in school. He developmentally on target.

Social/Emotional:

Milton participated in a psychological assessment on 9-12-02. The therapist at that time expressed that Milton was exhibiting signs of significant depression and anxiety. Psychotherapy was recommended but was not followed through by the adoptive family. The family will need to follow through on this recommendation that Milton receive therapy, prior to consummation.

Progress in Addressing Permanency:

The Harlan were in the process of consummating the adoption of Milton. The process was halted on hold on 11-26-02 when Mrs. Harlan revealed to the attorney ad litem assigned to the case methods of discipline she had used with Milton. The ad litem, Tammy Adams, felt the discipline was totally Inappropriate. The ad litem was also concerned that the Harlan had not followed through with recommendations from Dr. DeAlmeida that Milton attend counseling. The ad litem stated that she was not going to recommend to the court that this adoption be consummated at this time. She stated that she would revisit the consummation of the adoption, once Milton received counseling and Mr. and Mr. Harlan attended parenting classes and or counseling.

Extent of Compliance With Last Child's Plan:

Appropriateness of Services:
The services offered to the family have been appropriate for the Harlan's and Milton.

Continued Need for Placement:
Milton has bonded to W. and Mrs. Harlan and Is in need of a permanent home. All is being done to maintain the placement for the child.

Plans to Address Permanency.
An action plan has been outlined for the family in order that this placement can continue. This action plan has been court ordered.

Services To Meet The Child's Needs,

Need/Social and Emotional Needs	
Task	PSFC/Caregiver
Milton will participate in therapy	Mr. Harlan will transport Milton to his therapy sessions.
Time Frame As needed	Tlme Frame As needed.
Method of Evaluation	
Written assessment from therapist.	

Provision of Safe and Proper Care In Placement

Although Milton has been physically disciplined in this home, there is no evidence of physical abuse. Mr. Harlan has given his word that he will protect Milton and that either parent will use no physical discipline. M i l t o n will be interviewed at each visit regarding how he is being disciplined in the home and strongly encouraged to be open and honest
regarding how he is disciplined.

BAD COPY OF G(6)

ANS

Plans to Address Permanency:
An action plan has been outlined for the family in order that this placement can continue. This action plan has been court ordered.

Services To Meet The Child's Needs

Need: Social and Emotional Needs	
Task	PSFC/Caregiver Service
Milton will participate in therapy.	Mr. Harlan will transport Milton to his therapy sessions.
Time Frame	Time Frame
As needed.	As needed.
Method of Evaluation	
Written assessment from therapist.	

Provision of Safe and Proper Care in Placement
Although Milton has been physically disciplined in this home, there is no evidence of physical abuse. Mr. Harlan has given his word that he will protect Milton and that either parent will use no physical discipline. Milton will be interviewed at each visit regarding how he is being disciplined in the home and strongly encouraged to be open and honest regarding how he is disciplined.

INVITED PARTIES AND PARTICIPATION INFORMATION:

NAME	RELATIONSHIP TO CASE	DATE OF NOTIFICATION	TYPE OF NOTIFICATION	DATE COPY GIVEN	DATE OF PARTICIPATION
			Ms. Strong told my husband. It's tit		

EXPLANATION IF NO PARTICIPATION BY CHILD, MOTHER, FATHER OR CAREGIVER

I have been told that CPS. would take Milton if I did not sign. I was forced to sign. Please refer to court

Signature-Parent	Date	Signature-Parent	Date
Tiffany Harlan	1/26/2003	Mahonell Harlan	1/28/2003
Signature-Caseworker	Date	Signature-Child (Optional)	Date
Signature-Supervisor	Date	Signature-Review (If Required)	Date

Attach a copy of the following updated items unless they have already been provided to or obtained by the adoptive parents:

- medical log

II. SUMMARY OF ARGUMENT

Defendant DFPS is entitled to 11th Amendment immunity from all claims against it. Plaintiffs have not pled any facts demonstrating a clear waiver of the state's or its agencies immunity from suit or liability. Therefore, Defendant DFPS is entitled to an order dismissing all claims against it.

Plaintiffs' claims must be dismissed as to all Defendants because Plaintiffs do not state a viable cause of action against the Defendants for DFPS' removal of Plaintiffs' foster child from the Plaintiffs' foster care.

The individual Defendants Janice Petrey, Randy Joiner, Thomas Chapmond, and Betty Hable, are entitled to qualified immunity from all claims against them in their individual capacities. Plaintiffs have not pled any facts demonstrating that Defendants' conduct amounts to a violation of any constitutional right, that Defendants' actions were objectively unreasonable, or that all reasonable officials in Defendants' circumstances would have acted differently than did the Defendants. Because Plaintiffs' pleading does not provide sufficient facts on these issues, the individual Defendants are entitled to an order dismissing all claims against them.

III. STATEMENT OF FACTS

On March 11, 2002, DFPS placed a child, Milton Ray Williams, Jr. ("MRW.") in a preadoptive/foster placement with Plaintiffs. Ten and one-half months later, on January 28, 2003, for various authorized reasons, DFPS removed MRW from the temporary placement with Plaintiffs.

B. Plaintiffs Do Not Have A Viable Claim Against These Defendants.

Plaintiffs' contention that they were denied due process when DFPS removed MRW from their foster care is untenable. Plaintiffs had no right to a hearing before the child's removal. To support this conclusion, Defendants proffer the Adoptive Placement Agreement between DFPS and Plaintiffs. See Plaintiffs' Complaint at Exhibit #25. The Adoptive Placement Agreement at Paragraph 10 provides:

> "That the department as represented in Harris county, Texas shall retain managing conservatorship of the child unless otherwise directed by the court of continuing jurisdiction until such time as the adoption is legally consummated."

The Adoptive Placement Agreement at Paragraph 11 provides:

> "That the child may be returned to the department by the adoptive parent(s) or removed from the adoptive parent's home by the department at the discretion of either party any time before the adoption is legally consummated. It is understood that the decision to remove and the manner of removal by the department will be based on what the department determines to be in the child's best interests...".

MRW was removed from Plaintiffs' home on January 28, 2003 for various authorized reasons and before the adoption was legally consummated. According to the terms of the agreement, Plaintiffs had no right to any hearing before the removal. Therefore, Plaintiffs' claims fail.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Voice - (214) 767-4056, (800) 368-1019 TDD - (214) 767-8940, (800) 537-7697 (FAX) - (214) 767-0432

OFFICE OF THE SECRETARY
Office for Civil Rights, Region VI
1301 Young Street, Suite 1169 Dallas, TX 75202

Ms. Marvinell Harlan
5722 Tiffany
Houston, TX 77085

DEC 12 2007

Our Transaction Number:07-628044
Dear Ms. Dear Dear Ms. Harlan:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) has completed its investigation of your complaint filed on February 1, 2007, against the Texas Department of Family and Protective Services (DFPS), Child Protective Services (CPS). In the complaint, you allege that CPS engaged in racial discrimination by improperly removing Milton Williams from your home on January 28, 2003. You also state you were denied the right to a CPS hearing or other remedies to resolve the matter.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) as it applies to entities that receive HHS Federal financial assistance. Title VI prohibits discrimination based on race, color or national origin and applies to all of the recipient's programs and activities. OCR is also responsible for enforcing Section 1808(c) of the Small Business Job Protection Act (Section 1808) and the Multiethnic Placement Act (MEPA) as they apply to entities that receive HHS Federal financial assistance. Section 1808/MEPA prohibits discrimination based on race, color or national origin in adoption and foster care placements, and also applies to the recipient's programs and activities.

OCR reviewed information in regard to your allegations, including the information you provided, and found no evidence that CPS took actions based on a racial bias in this case. Therefore, we are closing our file on this case as of the date of this letter and no further action will be taken. This determination applies only to the matters addressed in our

investigation of this complaint, it neither covers issues or authorities not specifically addressed herein nor does it preclude future determinations of compliance that are based on subsequent investigations.

COMPLAINANT'S RIGHT TO CHALLENGE FINDINGS

When OCR's findings are not in favor of the complainant, the complainant may challenge the findings by requesting a review by OCR Headquarters. OCR provides the complainant this opportunity to challenge the determination under its administrative, discretionary authority. The complainant must submit the challenge in writing to:

Tamara Miller, Deputy Director
Civil Rights Division
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Humphrey"Bldg., Rm. 509F
Washington, D.C. 20201

The complainant must limit the challenge to those issues raised in the original complaint or during the course of the investigation. The challenge must identify the finding(s) of the regional office with which the complainant disagrees; it must state specifically the reasons why the complainant disagrees with the finding(s); and contain any information the complainant believes will support the challenge or any material evidence the complainant believes the regional office overlooked in the investigation of the complaint. Merely stating disagreement with the investigative findings will not be enough.

The complainant's request for review of the findings must be submitted to OCR Headquarters, at the above address, within thirty (30) days from the date of receipt of this letter. Extensions and modifications of this time limit and procedures will not be granted without good reason.

The OCR Headquarters office will determine whether the complainant has provided a sufficient basis for a full or limited review of this investigation, and inform the complainant of its decision in writing.

The OCR Headquarters office will also notify the covered entity when OCR's findings may be affected by any information the complainant provides.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION

The complainant may have the right to file a civil action to remedy discrimination by a recipient of Federal financial assistance or other covered entity.

The complainant may wish to consult an attorney about his/her right to pursue a private cause of action, any applicable statute of limitations, and other relevant considerations.

PROHIBITION AGAINST RETALIATION

The complainant has the right not to be intimidated, threatened, or coerced by a recipient, other covered entities or other person because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

DISCLOSURE OF RECORDS

Under the Freedom of information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personal information which, if released, would constitute an unwarranted invasion of privacy. Thank you for your assistance in this matter. If you have any questions, please contact Karmen Todd of my staff at (214) 767-4509 or (214)767-8940(TDD)

Sincerely,

/s/

Ralph D. Rouse

Regional Manager

FILED
Charles Bacarisse
District Clerk
JAN242003

No. 2002-49137

IN THE INTEREST OF	§ IN THE DISTRICT C O U R T
Milton Ray Williams Jr.	§ 310TH JUDICIAL D I S T R I C T
A CHILD	§ HARRIS COUNTY, TEXAS

MOTION FOR TEMPORARY INJUNCTION TO STOP CPS FROM TAKING ANY ACTION BECAUSE MOTHER HARLAN WILL NOT SIGN THE ADOPTION PLAN; MOTION TO APPOINT ANOTHER AD LITUM & NULLIFY CPS' ADOPTION PLAN; MOTION FOR CPS-MARECIA STRONG TO SUBMIT ADOPTION SOCIAL STUDY; MOTION FOR PETITIONERS BE GIVEN A COPY OF THE AD LITUM REPORT AND A COPY OF THE SOCIAL STUDY COMPLETED BY MS. MARECIA STRONG

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To The Honorable Judge *Lesa Millard:*

The Harlans received the adoption plan (Exhibit #1) on January 22, 2003. CPS told husband Harlan on January 23 that we must sign adoption plan by Monday. M. Harlan could not sign the adoption plan because CPS was acting on the ad litum's report. Ms. Harlan has told them we were asking the court for another ad litum. The Harlans are without an attorney. Ms. Petrey told Ms. Strong that there would not be any more meetings with ministers or anyone concerning M. Harlan's concerns. The Harlans met with Ms. Petrey and Ms. Strong and told them their concerns with the ad litum on December 20. M. Harlan left the meeting because Ms. Strong claimed that M. Harlan had not told her about the water and because it appeared CPS may act on and accept Attorney Adams' recommendations. CPS evidently rejected Harlans' concerns. M. Harlan does not know what action CPS will take because she has refused to sign the adoption plan. M. Harlan is asking the court for an immediate hearing for the best interest of Milton; we have fear CPS will take Milton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 24th day of January 2003, a true and correct copy of

MOTION FOR TEMPORARY INJUNCTION TO STOP CPS FROM TAKING ANY ACTION BECAUSE MOTHER HARLAN WILL NOT SIGN THE ADOPTION PLAN; MOTION TO APPOINT ANOTHER AD LITUM & NULLIFY CPS' ADOPTION PLAN; MOTION FOR CPS-MARECIA STRONG TO SUBMIT ADOPTION SOCIAL STUDY; MOTION FOR PETITIONERS BE GIVEN A COPY OF THE AD LITUM REPORT AND A COPY OF THE SOCIAL STUDY COMPLETED BY MS. MARECIA STRONG

has been forwarded to

Attorney Tammy Adams, Ad Litum
3730 Kirby Suite 1050 Houston, Texas
77098

both *Marecia Strong and Janice Petrey, Supervisor*
CPS
2525 Murworth
Houston, Texas 77054

Marvinell Harlan

Marvinell Harlan PRO SE
5722 Tiffany
Houston, Texas 77085
(713) 721-1317

Subscribed and sworn to before me, 24 Jan 2003

Notary Public in and
for Harris County, Texas My
commission expires:

REGINA BERRYMAN
Notary Public, State of Texas
My Commission Expires
MARCH 10, 2003

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mareciy Strong? Petry
CPS
2525 Morworth
Houston, Texas
77054

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A. Signature
X Carl Ellyes
☐ Agent
☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
1-27-03

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PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

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First-Class Mail
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• Sender: Please print your name, address, and ZIP+4 in this box •

Marrinell Harlan
5722 Tiffany
Houston, Texas
77085

77085+3337

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eleventh Amendment

The Judicial power of the United States shall not be construed to extend to any suit in law equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment

"nor be deprived of life, liberty, or property, without due process of law;"

Fourteenth Amendment

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." . . .

42 U.S.C. §1983 "Every person who, under color of any statute, ordinance, regulation, custom, of usage, of any state or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (Any victim who alleges and proves a violation, under color of state law, of a federally protected right has access to §1983. Deprivation or denial of hearing violates the due process clause of Fourteenth Amendment and Fifth Amendment; 28 U.S.C.A. Const. 1331(A), 1343, 42 U.S.C.A. 1983)

42 U.S.C.A. §625(a)(1)(C); §671(15)

The Adoption Assistance and Child Welfare Act of 1980 sets forth guidelines for a state's continued eligibility to receive federal funds for foster care and child welfare services and purposes in "(C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible." 42 U.S.C.A. §625(a)(1)(C) Both this Act of 1980-federal statue and the Texas FAMILY CODE mandated that CPS should have worked at returning Milton to the Harlans' home. (1) In order to receive federal funds for foster care under Title IV-E of the Act of 1980: the state "shall have a plan approved by the Secretary [of **Health and Human Services**] which-(15) . . .provides that, in each case, reasonable efforts will be made (A) prior to placement of a child in foster care to prevent or eliminate the need for removal of the child from home, and (B) to make it possible for the child to return to his home. . ."

42 U.S.C. 2000d

"No person in the United States shall on the ground of race, color, or national origin, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." K(2)

TEXAS STATE FAMILY CODE

FAM §262.105 (FILING PETITION AFTER TAKING POSSESSION OF CHILD IN EMERGENCY)

(a) When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay shall; (1) file a suit affecting the parent-child relationship; (2) request the court to appoint as attorney ad litem for the child; and (3) request an initial hearing to be held by no later than the first working day after the date the child is taken into possession. (b) If the Department of Protective and Regulatory Services files a suit affecting the parent-child relationship required under Subsection (a)(1) seeking termination of the parent-child relationship, the department shall file the suit not later than the 45th day after the date the department assumes the care, control, and custody of a child under Section 262.303.

FAM §262.106 INITIAL HEARING AFTER TAKING POSSESSION OF CHILD IN EMERGENCY WITHOUT COURT ORDER (a) The court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity shall hold an initial hearing on or before the first working day after the date the child is taken into possession. The court shall render orders that are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. (b) The initial hearing may be ex parte and proof may be by sworn petition or affidavit if a full adversary hearing if not practicable. (c) If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker or custodian who is presently entitled to possession of the child.

FAM §262.201(a)· Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the child was taken into possession by the government entity.

FAM §262.201 (b) At the conclusion to the full adversary hearing that the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution:
(b)(1) there was danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child. (b)(2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal and
(b)(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

FAM §262.109 (a) The department or other agency must give written notice as prescribed by this section to each parent of the child or to the child's conservator or legal guardian when a representative of the Department of Protective and Regulatory Services takes possession of a child under this chapter.

FAM §262.109 (b) the written notice must be given as soon as practicable, but in any event not later than the first working day after the date the child is taken into possession.
(c) the written notice must include
(1) The reason why the department or agency is taking possession of the child and the facts that led to the department to believe that the child should be taken into custody; **K(4)**

(2) The name of the person at the department or agency that the parent, conservator, or other custodian may contact for information relating to the child or a legal proceeding relating to the child;

(3) A summary of legal rights of a parent, conservator, guardian, or other custodian under this chapter and an explanation of the probable legal procedures relating to the child.

FAM §262.104 TAKING POSSESSION OF A CHILD IN EMERGENCY WITHOUT A COURT ORDER. If there is no time to obtain a temporary restraining order or attachment before taking possession of a child consistent with the health and safety of that child, an authorized representative of the Department of Protective and Regulatory Services, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions only: (1) . . . an immediate danger to the physical health or safety of the child. (2) the child has been the victim of sexual abuse; (3) the child has been the victim of sexual abuse; or (5) substance abuse of parent.

FAM§262.2015 (a) The court may waive the requirement of a service plan and the requirement to make reasonable efforts to return the child to a parent and may accelerate the trial schedule to result in a final order for a child under the care of the department at an earlier date than provided by Subchapter D, Chapter 263, if the court finds the parent has subjected the child to aggravated circumstances.

FAM§262.2015 (b) The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances

FAM §263.101 DEPARTMENT TO FILE SERVICE PLAN: No later than the 45th day after the court renders a temporary order appointing the department as temporary managing conservator of a child under Chapter 262, the department or other agency appointed as the managing conservator of a child shall file a service plan.

§101.024 ""**Parent**" means the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father."

§101.025 ""**Parent-child relationship**" means the legal relationship between a child and the child's parents as provided in Chapter 160. The term includes the mother and child relationship and the father and child relationship."

CONFIDENT1AL REPORT RELEASE REQUIRES WRITTEN CONSENT OF GUARDIAN

THE PSYCHOLOGY CLINIC
Steven DeAlmeida, DrPH, EdD, PC
2534 Walnut Bend, Suite B,
Houston,Texas 77042
(713) 781-9588 fax (713) 781-9538

PSYCHOLOGICAL EVALUATION

Patient: Milton (Harlan) Williams Age:5-9 Date of Birth: 11/17/1996 Grade: Kindergarten Gender. Male Date of Assessment: 09/12/2002 Psychologist: Steven DeAlmeida, Ed.D.

Reason for Evaluation: Milton Harlan, a five-year-nine-month-old boy was seen for evaluation on the request of Children's Protective Services. Milton is being adopted by Mr. and Mrs. Harlan. Milton has been in foster care for a number of years and exhibited some of the coping problems commonly found in foster care children.

Test Utilized: BASC Parent Rating Scales, Vineland Social-Emotional Early Childhood Scales, Rorschach, and Clinical Interview and Observation.

BASC (Behavioral Assessment System for Children) PARENT RATING SCALES

The report is based on the Adopting Mother's rating of Milton's behavior• Any scores in the Clinical Significant range suggest a high level of maladjustment. Scores in the At-Risk range identify either a significant problem that requires attention but is below the level indicating an urgent need for intense interventions.

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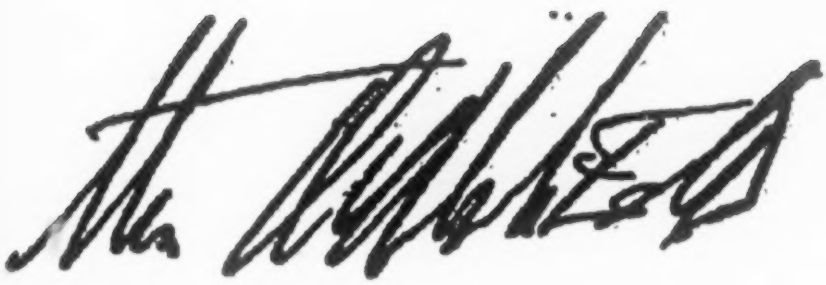
RECOMMENDATIONS

1. Milton is a candidate for adoption and needs the security of a caring family.

2. There was indication of a bond between Mrs. Harlan and Milton. The assessment did not indicate problems in her relationship with and care for Milton that would be detrimental if she and her husband adopted Milton. Some behavioral control difficulties observed during the last part of assessment appear to be an expression of agitated depression rather than problems in discipline and behavior control *per se.*

3. Milton does exhibit signs of significant depression, anxiety, and the impact of his traumatic experiences. Individual psychotherapy for Milton and family therapy could help reduce identified functioning problems and the stress his adopting parents would have during the first six months of adoption.

4. The possibility that short-term medication could be useful should be explored if Milton continued to exhibit signs of a mood disorder. From the information available about his natural parents, the possibility of a biologically based mood disorder is present. Once permanent placement occurs, he should stabilize and medical intervention for depression may not be required. However, depressive: disorder often show up with greater intensity in adolescence and adulthood. That possibility should be considered in his long-term care.



Steven DeAlmeida, Ed.D. Licensed Psychologist. Texas 2-4912

Exp. 06/30/2003

L(3)

CPS FIGURES SHOW RACIAL DISPARITIES IN SYSTEM

■ Black children are far more likely than others to be taken from homes in Houston, state

By MELANIE MARKLEY
HOUSTON CHRONICLE

Black children in the Houston area are three times more likely to be removed from their homes and placed in the foster care system than children in white or Hispanic families, according to data obtained by the Houston Chronicle.

Statewide, blacks are more than twice as likely to end up in the child welfare system, though experts say national data show that black parents are no more likely to abuse their children.

"These numbers are staggering," said counselor Greg Baines, who belongs to a group that has picketed Child Protective Services and family courts demanding answers. "The system is a predator, and it preys upon those individuals who can least defend themselves."

CPS officials are hard-pressed to explain the disproportionate numbers, though they have begun looking for answers.

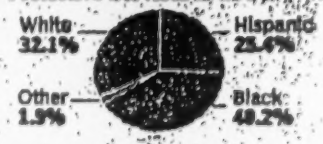
"We're looking at the data, and we are trying to assess what it is saying to us," said Joyce James, the state's assistant commissioner for CPS. "We know we have an over-representation of African-American children already in our system, and we are trying to determine why that is and what we can do."

Last year, blacks statewide made up 12.9 percent of the youth population but 26 percent of the children removed from their homes by CPS. In the Houston area, blacks were 17.9 percent of the population and

Please see CPS, Page A8

TAKEN BY CPS

Racial/ethnic breakdown of Houston-area children removed from their homes by Child Protective Services in 2004:



Compared with the Houston-area general population:

Source: Texas Child Protective Services
S.O. OBEN / CHRONICLE

APPENDIX M(1)

Feb. 10, 200
pg. 1

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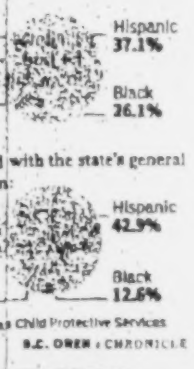
M(2)

CPS: City statistics mirror national figures

CPS STATEWIDE

Racial/ethnic breakdown of Texas children removed from their homes by Child Protective Services in 2004:



Compared with the state's general population:

Sources: Texas Child Protective Services

B.C. OREN / CHRONICLE

KAREN WARREN / CHRONICLE

RESPONSE: Greg Baines of the Harris County Leadership Council, speaking Tuesday at Acres Homes' Mount Zion Missionary Baptist Church, said he will address the Legislature about the disproportionate removals.

CONTINUED FROM PAGE A1

10.2 percent of those taken into CPS custody. About three-fourths of the children were placed in foster care; the rest went with approved relatives under state supervision.

According to the Casey Family Programs in Seattle, all but a few states have a disproportionate number of blacks in foster care.

According to the foundation, black children make up 15 percent of the U.S. population but account for 41 percent of children in foster care.

Some blame institutional racism for the disparity. The Rev. Herschel Smith, who chairs the Harris County Leadership Council, goes so far as to call it "genocide," saying CPS is intent on "destroying the African-American families. You take away the child, you take away the heritage of the child."

But others say poverty is the important.

Dr. Jhy Roberts, who wrote 1997 book called *Shattered Bonds* on the issue, said a variety of factors likely are causing more black children to end up in foster care, including poverty, cultural bias and a system that is focused more on crisis management than prevention.

"It's not the case that caseworkers are going around removing children just because they are black," said Roberts, a Northwestern University professor.

"But I think that stereotypes, and also the more disadvantaged position of many African-American families, combine with other kinds of problems to create this disparity."

Ralph Bayard, senior director in the office of diversity for the Casey Family Programs, said the biggest challenge for states is finding proper data.

"There is a tremendous dearth of data on this particular issue," said Bayard, "and so people can make all kinds of assumptions."

The state recently announced a partnership with the Casey Family Programs to examine the issue and find better ways to keep families intact while still protecting children from neglect and abuse.

Randy Joiner, the Houston area's district director for CPS, said that one of the initiatives was to create an advisory task force in Houston made up of community members, including Smith, as well as child welfare professionals.

Responding to allegations of institutional racism, Joiner said he analyzed the racial makeup of his staff and found that most of the caseworkers, as well as those who supervise them, are themselves black.

Next week, Joiner said, a training session on "Undoing Racism" will be sponsored by Casey "to get the managers very aware of themselves and what is going on in the system."

Joiner said he also wants to recruit more minority families for adoptions. In the Houston area, black children make up 57 percent of the children in foster care who await adoption.

"If we address this as a big-picture issue, I think it will really help this system," said Joiner. "What I have not done well in the past . . . is keep this issue on the front burner."

Carolyne Rodriguez, with the Casey Family Programs in Texas, said advisory committees have been set up in the Houston and Dallas areas, because those areas have the largest population of children in CPS custody.

The plan, she said, is to find causes for the racial disparity, look for gaps in the data and form partnerships in the community to address the problem.

(2)M 2 C 1

Study links racial disparity at CPS, poverty

■ State confirms more black kids go into foster care, looks for remedy

By MELANIE MARKLEY
HOUSTON CHRONICLE

Black children are overrepresented in the Texas foster care system and are less likely to be returned home or adopted once they are removed, according to a new state study.

The study, released this week by the Texas Health and Human Services Commission, was ordered by the Legislature after a Houston Chronicle article in February underscored racial disparities in Child Protective Services.

The study, noting that the disparity is a national phenomenon, found black children are more than twice as likely to be removed from their families as Anglo or Hispanic children and are far more likely to remain in the child welfare system.

"African-American children stay in foster homes longer, have more placements while in care and wait longer to be adopted, if adoption occurs at all," the report said.

Most children are taken into CPS custody because of neglectful supervision, not abuse, and poverty is cited as a major factor. More than 60 percent of the children in CPS come from families with incomes of $10,000 or less, the report said. While children from black and white low-income families are more likely to end up in foster care, the higher poverty rate among blacks fuels the disparity.

"Because poverty appears to be a significant part of the problem," the report said, "policies that provide resources to support poor families' parenting efforts are likely to promote improved outcomes."

Stephanie Goodman, Health and Human Services spokeswoman, said a follow-up report will be released in July.

Joyce James, the state's assistant commissioner for CPS, said there were no major surprises in the report. She said the agency is looking at the raw data to better address the problem.

"We already knew that poverty contributed to many of these cases coming to our attention," she said.

The state agency has taken steps, James said, including hiring disproportionality specialists, training staff members on cultural competency and partnering with the Casey Family Program to look for solutions.

The agency has contracted with an organization that will try to match each child in state custody with an adoptive family, James said. And caseworkers are making more of an effort to place children with relatives instead of putting them in foster care, she said.

In the Houston region, an advisory task force made up of community members and child welfare professionals also is examining the issue and looking for solutions.

James said that CPS is planning to station some workers in Houston's predominantly black Sunnyside neighborhood to provide better community access to parenting classes and other services.

"We're open and willing to change some of our practices to make sure that the outcomes improve for families and children," she said.

The Rev. Herschel Smith, who serves on the CPS task force, once picketed the agency over alleged racial policies. Now, he said, he is pleased the agency is taking the issue seriously. "We are making some progress," he said.

melanie.markley@chron.com

Houston Chronicle
Jan. 6, 2006

APPENDIX M(3)

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